TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 333

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL., ETC., APPELLANTS,

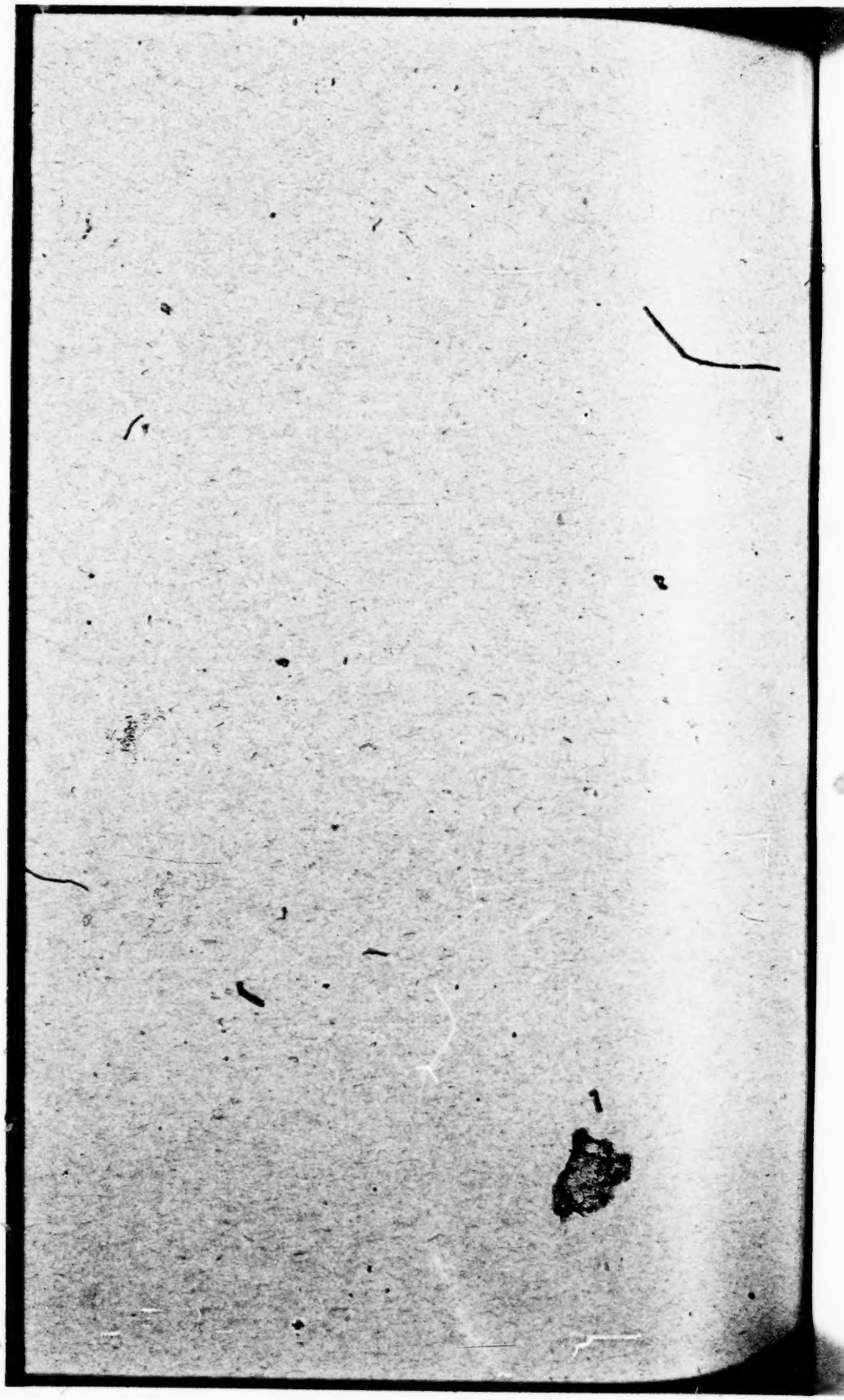
vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND J. W. CAMMACK, ATTORNEY GENERAL OF THE STATE OF KENTUCKY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

FILED AUGUST 5, 1930

(35,255)



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[fols. a & 1 & 2] [Caption omitted]

[fol. 3]

IN UNITED STATES DISTRICT COURT, WESTERN KENTUCKY

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL Railroad Company, The Baltimore & Ohio Railroad Company, The Chesapeake & Ohio Railway Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Who Sue, etc., Petitioners,

against

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

PETITION—Filed Dec. 14, 1929

To the Honorable the Judges of said District Court:

Your petitioners, Louisville & Nashville Railroad Company, Illinois Central Railroad Company, The Baltimore & Ohio Railroad Company, The Chesapeake & Ohio Railway Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company, all duly created and organized corporations, who sue on behalf of themselves and of all other carriers subject to the Interstate Commerce Act which may have an interest in the premises, bring this action against the United States of America and the Interstate Commerce Commission, hereinafter called Commission, for the purpose of enjoining, setting aside, annulling and suspending a certain order of the Commission made and entered on the 4th day of November, Anno Domini 1929, in a proceeding by the Commission, not upon the petition of any party [fol. 4] but on its own motion, designated on the Docket of the Commission as "No. 17757. In the Matter of Use of Private Passenger Train Cars," and also an order made by said Commission, on its own motion and not on petition of any party, on the 30th day of July, 1929, amending its Pass Regulations as hereinafter stated.

The petitioners respectfully set forth and allege the following facts as constituting their cause of action.

1. The petitioners are all common carriers by railroad subject to the Interstate Commerce Act and operate lines

of railroad and perform transportation service in the Western District of Kentucky and elsewhere. The Louisville & Nashville Railroad Company, one of said petitioners, has its principal office and its principal operating office in the City of Louisville in the Western District of Kentucky and is a corporation of said State.

Your petitioner, the Illinois Central Railroad Company, is a corporation of and a citizen of the State of Illinois; your petitioner, the Baltimore & Ohio Railroad Company, is a corporation of and a citizen of the State fo Maryland; your petitioner, the Chesapeake & Ohio Railway Company, is a corporation of and a citizen of the State of Virginia; your petitioner, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, is a corporation of and a citizen of the State of Ohio.

2. On the 7th day of December, in the year 1925, the Commission, on its own motion, instituted an investigation into and concerning the use of private passenger train cars, including so-called office cars, in the transportation of persons, with a view of making such order or orders in the premises as might be deemed by it warranted.

3. On the 23d day of July, 1928, a Proposed Report in said proceeding was submitted to the Commission, and was served upon petitioners and all other carriers, and sixty days from the date of the service thereof were allowed for the filing of exceptions, which time was afterwards extended so as to include December 22, 1928. On the last mentioned date, exceptions were filed by the Association of Railway Executives, on behalf of its membership, which [fol. 5] at that time comprised, and now comprises, substantially all of the Class I railroads in the United States as such roads are classified by the Interstate Commerce Commission, which represent about 97 per cent of the railroad transportation revenues and about 91 per cent of the railroad mileage in the United States; and argument was duly heard thereon. Whereupon, on the 14th day of March, 1929, the matter was submitted to the Commission and was decided on June 21, 1929.

4. On the 4th day of November, A. D., 1929, the Commission entered an order in the case, a copy of which, marked Exhibit A, is herewith filed as a part of this petition, re-

quiring the carriers named in the list attached thereto, on behalf of which carriers exceptions were filed and argument heard and on whose behalf a waiver of further hearing was expressly made, among which were included your petitioners, to cease and desist, on or before January 15, 1930, and thereafter to abstain, from the transportation or movement of private passenger train cars, including so-called office cars, of another carrier free or at other than published tariff rates. A copy of the report of the Commission on which said order was based is also filed herewith, marked Exhibit B, as a part of this petition.

5. By said order your petitioners and a large number of other carriers subject to the Interstate Commerce Act are prohibited from transporting or moving, in the Western District of Kentucky and in all other parts of the United States, private passenger train cars, including so-called office cars, of another carrier free or at other than published tariff rates under any conditions or circumstances whatever.

6. Each of your petitioners is, and all other carriers subject to the Interstate Commerce Act are, authorized by paragraph (7) of section 1 of the Interstate Commerce Act to issue interstate free tickets, free passes, or free transportation for passengers who are its own employees, and their families, its officers, agents, surgeons, physicians and attorneys at law and to other persons mentioned in that paragraph, and to interchange with other carriers passes for their officers, agents and employees and their families, and to carry free any passengers with the object of pro-
[fol. 6] viding relief in cases of general epidemic, pestilence or other calamitous visitation. By section 22 of said Act they are likewise authorized to give free carriage to their own officers and employees and to exchange passes or tickets with other railroad companies for their officers and employees.

Under and pursuant to the authority thus conferred by law, each of your petitioners has issued, and there are now outstanding in the hands of persons lawfully entitled to use the same, interstate free tickets, free passes or other evidences entitling the holder to free transportation over the lines of your several petitioners in the Western District

of Kentucky and elsewhere, which, in the case of each of your petitioners, was given by it in exchange for similar interstate free tickets, free passes or other evidences of the right to free transportation issued by other carriers to its officers or employees entitled under the law to use such free transportation.

7. Your petitioners are advised that a carrier is not a common carrier of the business or private cars owned by another carrier when they are used by the former as instruments or facilities of its own transportation service, and is not acting as a common carrier of such cars in moving the the same when occupied by a person entitled to use and using free transportation, to any greater or different extent than of, or when moving, its own cars in the same service; and that it is the right of the carrier issuing the free pass, free ticket or other evidence of such free transportation as above mentioned, to transport free over its line persons lawfully holding such free passes, free tickets or other evidence of free transportation; and, in the event of the carrier's undertaking to do so, it becomes its duty to provide itself with, and to furnish, facilities and instrumentalities to transport such persons on and over its line. The law does not impose a limitation on the character of the transportation, nor upon the facilities and instrumentalities, that may be furnished. It may be in any vehicle which is safe and suitable for the purpose and which the carrier making the movement may select and provide. There is likewise no limitation imposed by law to prevent such carrier from accepting or securing from another carrier the vehicle in [fol. 7] which such transportation service is to be furnished nor as to the terms on which such vehicle may be secured. In the event the transportation is furnished in a vehicle not belonging to the carrier, but accepted or secured on terms satisfactory to it from another, such vehicle is not property of a shipper, in the sense contemplated by the statute requiring the filing of tariffs for the transportation of property, but becomes, pro hac vice and for the purpose of such movement, the property of the carrier making the movement and rendering the service. Your petitioners are further advised, and hereby allege, that the service of moving a car owned by another carrier when occupied by persons entitled to use, and using, free transportation, is not

performed for the other carrier, but is performed as a part of its own services in the transportation of passengers holding the free transportation which, under the law, they are permitted to have and use.

8. Your petitioners further show that, in any event, it is also lawful, under the provisions of the statute permitting free transportation in certain cases, for a carrier subject to the Act to handle free the car of another such carrier as an incident of such free transportation.

9. Your petitioners further show that the practice of moving persons entitled to use, and using, free transportation in the private or business car of another carrier free and without imposing any charge for the movement of the car has existed from the earliest days of steam railroads and was generally known to exist at the time of the original enactment by Congress of the Interstate Commerce Act and at the time of each of the amendments made thereto; and neither in the original Act nor in any subsequent amendment is there contained any prohibition against the practice, but, on the contrary, Congress has itself, as hereinafter shown, sanctioned and adopted the interpretation of said laws whereby the said practice was so recognized as lawful.

10. Moreover, the practice referred to has always been well known to the Commission and both impliedly and expressly was recognized by it as lawful up to the time of the report in this proceeding. Paragraph (6) of section 1 of the Interstate Commerce Act provides:

[fol. 8] It is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs. • • •

This has, in effect, always been in the Interstate Commerce Act, but was specifically added in the amendment of June 18, 1910, and has continuously since been a part of said Act.

Paragraph (1) of section 6 provides and has always provided:

That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established.

No tariff such as is referred to in said provisions of the law, covering the movement by one carrier subject to the Interstate Commerce Act of the private or business cars of another such carrier when occupied by a person entitled to use and using free transportation, has ever been filed with the Commission, as the Commission has well known, and no requirement was ever made by the Commission, up to the time of its order in this proceeding, that any such tariff should be filed.

Moreover, both the Conference Rulings of the Commission up to the time that the Conference Rulings were rescinded by an order entered on the 26th day of December, 1928, and its Pass Rgulations, up to the time of and until after the report in this proceeding, contained an express recognition of the lawfulness of the practice referred to and, in fact, prescribed the form of a pass, which would be [fol. 9] recognized by the Commission as lawful, for the car, as well as for the occupant, in case such occupant, using and entitled to use free transportation, was transported in the car of another carrier. The form so prescribed was as follows:

Pass John Smith, President, car, and five officers and employees of the X. Y. Z. Railway Company—

the X. Y. Z. Railway Company being a carrier other than the carrier issuing the pass, and your petitioners further show that after the adoption and promulgation of the regulations aforesaid by the Commission under and by virtue of sections 1 and 22 of the Interstate Commerce Act, Congress reenacted the said sections and thereby itself ratified and adopted the interpretation of said sections under and

by virtue of which the said regulations were adopted and promulgated as aforesaid.

A copy of the order above mentioned, of the 26th day of December, 1928, rescinding its Conference Rulings, is herewith filed as a part of this petition, marked Exhibit C. In said order the Commission stated that its action in rescinding its Conference Rulings was taken without reference to the correctness of the individual rulings.

On the 30th day of July, 1929, after the final report in this proceeding, the Commission entered an order changing its previous Pass Regulations, which were then as above stated, by adding the following:

A car pass may be issued only for cars owned by the issuing carrier or held by it under lease for use in its business as a common carrier. It may not be issued for other cars. This provision is not to be construed as prohibiting the issuance of passes for cars of lines operating as a part of the same system. See In the Matter of the Use of Private Passenger Train Cars, 155, I. C. C., 775.

which reference is to the report of the Commission in this proceeding. A copy of said order of the Commission made on the 30th day of July, 1929, is herewith filed, marked Exhibit D, as a part of this petition.

[fol. 10] By paragraph (8) of section 16 of the Interstate Commerce Act, heavy pecuniary penalties are imposed on any carrier, as well as on its officers, representatives or agents, who knowingly fail or neglect to obey any such order of the Commission as that entered by it, as hereinbefore alleged, on the 4th day of November, 1929, and as that entered by it as aforesaid on the 30th day of July, 1929, to-wit, a forfeiture to the United States of the sum of five thousand dollars for each offense, every distinct violation being defined as a separate offense and, in case of a continuing violation, each day to be deemed a separate offense.

11. The United States of America is made defendant in this suit pursuant to the mode of procedure prescribed in the Commerce Court Act (36 Stat. L. 539), approved June 18, 1910, which procedure must be followed in the District Court pursuant to the requirements of the District Court Jurisdiction Act, being part of the Urgent Deficiency Ap-

propriations Act (38 Stat. L. 219), approved October 22, 1913.

The Commission is an administrative tribunal created by the Interstate Commerce Act and is specifically charged with the administration and enforcement of the provisions of said Act.

12. Your petitioners further show that said report of the Commission and its said order of November 4, 1929, and its said order of July 30, 1929, are erroneous, are not authorized by law and are invalid in so far as they or either of them undertakes to declare unlawful and to forbid the transportation or movement by a carrier subject to the Interstate Commerce Act of the private passenger cars, including so-called office cars, owned by another such carrier free or at other than published tariff rates when occupied by a person using and lawfully entitled to use free transportation or to declare unlawful and to forbid accessorial transportation or movement of such cars in connection with or as incidental to such free transportation service; and the effect of said orders, if enforced, would be to deprive your petitioners and other carriers similarly situated of the right to make a lawful use of their respective properties, and consequently to deprive them of their properties with- [fol. 11] out due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

Wherefore your petitioners pray:

1. That the United States of America and the Interstate Commerce Commission be made parties defendant to this petition and that subpœnas in chancery issue out of and under the seal of this honorable Court, directed to the defendants, as required by law, and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the Secretary of the Commission, and another copy in the Department of Justice, as in said District Court Jurisdiction Act provided, and that thereby the defendants and each of them be required, on or before a date to be specified in such subpœnas or notices, to appear herein and answer this petition, but not under oath, answer under oath being hereby expressly waived.

2. That a temporary or interlocutory injunction be entered herein, restraining, enjoining and suspending, until the further order of this Court, the effect and enforcement of said orders of the Commission in so far as they are hereinbefore complained of as illegal.

3. That after final hearing this Court adjudge, order and decree that said finding of the Commission and its said orders are and have at all times been beyond the lawful authority of the Commission in so far as they or either of them undertakes to declare unlawful and to prohibit the transportation or movement free and without charge by one carrier subject to the Interstate Commerce Act of the private or business car of another such carrier when occupied by a person using and lawfully entitled to use free transporfation, or undertakes to declare unlawful and to prohibit accessorial transportation or movement of such car in connection with or as incidental to such free transportation service; and that said orders, to the extent herein complained of as unlawful, be perpetually set aside, suspended and annulled, and the enforcement thereof perpetually enjoined.

4. That your petitioners and each of them may have such other and further relief in the premises as in equity and justice they are entitled to receive and as may be deemed by this honorable Court to be adequate and proper under the circumstances.

[fol. 12] And, as in duty bound, your petitioners will ever pray, etc.

Louisville & Nashville Railroad Company, by W. R. Cole; Illinois Central Railroad Company, by L. A. Downs; The Baltimore & Ohio Railroad Company, by Daniel Willard; The Chesapeake & Ohio Railway Company, by Jerry J. Bernet; Cleveland, Cincinnati, Chicago & St. Louis Railway Company, by P. E. Crowley; Edward S. Jouett, R. V. Fletcher, John J. Cornwell, Robert B. Tunstall, H. N. Quigley, Alfred P. Thom, Alfred P. Thom, Jr., Counsel and Solicitors.

[fol. 13] *Duly sworn to by* W. R. Cole. *Jurat omitted in printing.*

[fol. 14] EXHIBIT "A" TO PETITION

Order

At a general Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of November, A. D. 1929

No. 17757

In the Matter of Use of Private Passenger Train Cars

It appearing that, in compliance with the statute in such case made and provided, this commission, upon its own motion, entered into an investigation into and concerning certain questions arising under sections 2, 3, 6 and 22 of the Interstate Commerce Act as to the transportation or movement of private passenger cars, including so-called office cars, of one carrier subject to the Act by another such carrier free or at other than published tariff rates, and relating to the enforcement of the foregoing provisions of the Act in that regard; and

It further appearing that a full investigation of the matters and things involved was had, in the course of and pursuant to which a proposed report was submitted to the Commission, whereupon the carriers named in the list hereto attached appeared and by counsel excepted to said report, on which exceptions argument, oral and in writing, was had; and

It further appearing that on the 21st day of June, 1929, this commission after full consideration overruled said exceptions and made and filed a report containing its conclusions thereon, which report is hereby referred to and made a part hereof, and therein decided:

1. That the transportation or movement of private passenger cars, including so-called office cars, of one carrier subject to the Interstate Commerce Act by another such carrier free or at other than published tariff rates is contrary to the provisions of the Interstate Commerce Act;

2. That it is unjustly discriminatory and unduly preferential and prejudicial to haul such private cars of other carriers free, or at less than published tariff rates, while

charging certain minimum fares and revenues for the movement of privately owned or chartered cars; and

3. That the transportation of persons in such private passenger cars, including berth and other accommodations, [fol. 15] at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory and unduly preferential and prejudicial.

In its report the commission declared that no order appeared to be necessary. On further and subsequent consideration, however, the commission is of opinion that an order in the premises is proper and appropriate, and, the exceptants to the said proposed report having appeared before the commission and expressly waived any further hearing in the premises,

It is ordered that the carriers named in the list hereinbefore referred to and attached hereto, on behalf of which such exceptions were filed and argument heard and on whose behalf a waiver of further hearing has been expressly made, be, and each of them hereby is, notified and required to cease and desist, on or before January 15, 1930, and thereafter to abstain, from the transportation or movement of private passenger train cars, including so-called office cars, of another carrier free or at other than published tariff rates.

And it is further ordered that this order shall continue in force until the further order of the commission.

By the commission, George B. McGinty, Secretary.

(Seal.)

[fol. 16] Association of Railway Executives

Member Roads

Abilene & Southern Railway Company.
The Akron, Canton & Youngstown Railway Company
The Ann Arbor Railroad Company
Manistique and Lake Superior Railroad Company
The Atchison, Topeka and Santa Fe Railway Company
Beaumont Wharf and Terminal Company
Gulf, Colorado and Santa Fe Railway Company
Panhandle and Santa Fe Railway Company

Atlanta and West Point Railroad Company
Atlanta, Birminigham and Coast Railroad Company
Atlantic Coast Line Railroad Company
The Baltimore and Ohio Railroad Company
The Baltimore and Ohio Chicago Terminal Railroad Company
Dayton and Union Railroad Company
The Staten Island Rapid Transit Railway Company
The Sharpsville Railroad Company
Bangor and Aroostook Railroad Company
Van Buren Bridge Company
Bessemer and Lake Erie Railroad Company
Boston and Maine Railroad
Buffalo & Susquehanna Railroad Company
Buffalo, Rochester and Pittsburgh Railway Company
Canadian National
Grand Trunk Western Railway Company
Atlantic and St. Lawrence Railroad Company
Chicago, Detroit and Canada Grand Trunk Junction Railroad Company
Cincinnati, Saginaw and Mackinaw Railroad Company
Detroit, Grand Haven and Milwaukee Railway Company
Duluth, Winnipeg and Pacific Railway Company
Grand Trunk Western Railway Company
Michigan Air Line Railway
The Pontiac, Oxford and Northern Railroad Company
St. Clair Tunnel Company
Toledo, Saginaw and Muskegon Railway Company
Canadian Pacific Railway
Canadian Pacific Lines in Maine
Canadian Pacific Lines in Vermont
[fol. 17] Central of Georgia Railway Company
Wadley Southern Railway Company
Wrightsville and Tennille Railroad Company
The Central Railroad Company of New Jersey
Central Vermont Railway Company
The Chesapeake and Ohio Railway Company
The Chicago and Alton Railroad Company
Chicago and Eastern Illinois Railway Company
Chicago and Illinois Midland Railway Company
Chicago and North Western Railway Company

Chicago and Western Indiana Railroad Company
Chicago, Burlington & Quincy Railroad Company
Quincy, Omaha & Kansas City Railroad Company
Chicago Great Western Railroad Company
Chicago, Indianapolis and Louisville Railway Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
The Chicago, Rock Island and Pacific Railway Company
The Chicago, Rock Island and Gulf Railway Company
Chicago, Saint Paul, Minneapolis and Omaha Railway Company
Clinchfield Railroad Company
The Colorado and Southern Railway Company
Cumberland and Pennsylvania Railroad Company
The Delaware and Hudson Company
Greenwich & Johnsonville Railway Company
The Delaware, Lackawanna and Western Railroad Company
The Denver and Rio Grande Western Railroad Company
The Denver and Salt Lake Railway Company
Detroit, Toledo and Ironton Railroad Company
The Duluth, South Shore and Atlantic Railway Company
Mineral Range Railroad Company
Erie Railroad Company
Chicago and Erie Railroad Company
The New Jersey and New York Railroad Company
New York, Susquehanna and Western Railroad Company
The Wilkes-Barre and Eastern Railroad Company
Florida East Coast Railway Company
Fort Smith and Western Railway Company
Fort Worth and Denver City Railway Company
Great Northern Railway Company
Farmers' Grain and Shipping Company

[Pol. 18] Gulf Coast Lines:

New Orleans, Texas & Mexico Railway Company
The St. Louis, Brownsville and Mexico Railway Company
The Beaumont, Sour Lake & Western Railway Company
The Orange & Northwestern Railroad Company

New Iberia & Northern Railroad Company
Gulf, Mobile and Northern Railroad Company
The Hocking Valley Railway Company
The Huntingdon and Broad Top Mountain Railroad & Coal Company
Illinois Central Railroad Company
Gulf and Ship Island Railroad Company
The Yazoo and Mississippi Valley Railroad Company
International Great Northern Railroad Company
The Kansas City Southern Railway Company
Texarkana and Fort Smith Railway Company
Lake Superior & Ishpeming Railroad Company
Lehigh and New England Railroad Company
Lehigh Valley Railroad Company
The Long Island Railroad Company
Louisiana & Arkansas Railway Company
Louisville & Nashville Railroad Company
Maine Central Railroad Company
Midland Valley Railroad Company
The Minneapolis & St. Louis Railroad Company
Minneapolis, St. Paul & Sault Ste. Marie Railway Company
Minnesota and International Railway Company
Missouri Kansas Texas Railroad Company
Missouri-Kansas-Texas Railroad Company of Texas
Missouri Pacific Railroad Company
Natchez & Southern Railway Company
Union Railway Company
Mobile and Ohio Railroad Company
The Nashville, Chattanooga & St. Louis Railway
Nevada Northern Railway Company
New Orleans Great Northern Railroad Company

New York Central Lines:

The Cincinnati Northern Railroad Company
The Cleveland, Cincinnati, Chicago and St. Louis Railway Company
The Muncie Belt Railway Company
Indiana Harbor Belt Railroad Company
Kankakee and Seneca Railroad Company
[fol. 19] The Michigan Central Railroad Company
Chicago, Kalamazoo and Saginaw Railway Company
The New York Central Railroad Company

The Pittsburgh and Lake Erie Railroad Company
Evansville, Indianapolis & Terre Haute Railway Company
The Chicago River and Indiana Railroad Company
Chicago Junction Railway Company
The New York, Chicago and St. Louis Railroad Company
The New York, New Haven and Hartford Railroad Company
New York, Ontario and Western Railway Company
Norfolk & Western Railway Company
Norfolk Southern Railroad Company
Northern Pacific Railway Company
The Gilmore and Pittsburgh Railroad Company, Limited
Northwestern Pacific Railroad Company
The Pennsylvania Railroad Company
Baltimore, Chesapeake & Atlantic Railway Company
Baltimore and Eastern Railroad Company
The Ohio River and Western Railway Company
The Pennsylvania Railroad Company
Waynesburg and Washington Railroad Company
West Jersey and Seashore Railroad Company
Pennsylvania and Atlantic Railroad Company
Pere Marquette Railway Company
The Pullman Company
Reading Company
Atlantic City Railroad Company
Catasqua and Fogelsville Railroad Company
The Gettysburg and Harrisburg Railway Company
The North East Pennsylvania Railroad Company
Perkiomen Railroad Company
The Philadelphia and Chester Valley Railroad Company
The Philadelphia, Newtown and New York Railroad Company
The Port Reading Railroad Company
Reading and Columbia Railroad Company
Stony Creek Railroad Company
Richmond, Fredericksburg and Potomac Railroad Company
The Rio Grande Southern Railroad Company
Rutland Railroad Company
The St. Joseph and Grand Island Railway Company

[fol. 20] St. Louis San Francisco Railway Company
Fort Worth & Rio Grande Railway Company
Paris and Great Northern Railroad Company
Quanah, Acme & Pacific Railway Company
St. Louis, San Francisco and Texas Railway Company
St. Louis Southwestern Railway Company
St. Louis Southwestern Railway Company of Texas
San Antonio, Uvalde & Gulf Railroad Company
Seaboard Air Line Railway Company
Raleigh & Charleston Railroad Company
Tampa Northern Railroad Company
Southern Pacific Company
Texas and New Orleans Railroad Company
Southern Railway Company
The Alabama Great Southern Railroad Company
The Cincinnati, New Orleans and Texas Pacific Railway Company
Georgia Southern and Florida Railway Company
New Orleans and Northeastern Railroad Company
Northern Alabama Railroad Company
Harriman and Northeastern Railroad Company
New Orleans Terminal Company
St. Johns River Terminal Company
Cincinnati, Harrogate & Cumberland River Railway Company
Asheville and Spartanburg Railway Company
Blue Ridge Railway Company
Carolina and Tennessee Southern Railway Company
Danville and Western Railway Company
High Point, Randleman, Asheboro and Southern Railroad Company
Mocksville and Statesville Railroad Company
Southern and Knoxville Railroad Company
State University Railroad Company
Tennessee and Carolina Southern Railway Company
Yadkin Railroad Company
Spokane, Portland and Seattle Railway Company
Oregon Trunk Railway
United Railways Company
Tennessee Central Railway Company
The Texas and Pacific Railway Company
The Weatherford, Mineral Wells and Northwestern Railway Company
[fol. 21] Toledo, Peoria & Western Railroad Company

The Trinity and Brazos Valley Railway
The Ulster and Delaware Railroad Company
Union Pacific Railroad Company
[illegible] & Salt Lake Railroad Company
Oregon Short Line Railroad Company
[illegible] Railroad & Navigation Company
[illegible] Company
[illegible] Company
[illegible] Company
[illegible]
[illegible] Company
[illegible] Company
[illegible] Railway Company

commodations is unjustly discriminatory and unduly preferential and prejudicial.

Thomas P. Healy for Interstate Commerce Commission.

Alfred P. Thom, Alfred P. Thom, jr., and R. H. Aishton for Association of Railway Executives.

W. H. Lyford for Chicago & Eastern Illinois Railroad Company.

Report of the Commission

McManamy, Commissioner:

Exceptions to the proposed report were filed on behalf of the Association of Railway Executives and the Chicago & Eastern Illinois Railroad Company and oral argument has been had.

This is an investigation instituted on our own motion into and concerning the use of private passenger train cars, including so-called office cars, in the transportation of persons, with a view to making such order or orders in the premises as may be warranted.

A questionnaire was sent to all Class I and II carriers and to switching and terminal carriers, calling for information as to private passenger train cars owned, leased, or operated, the movement or use of such cars as were transported free or at less than tariff rates on home and foreign lines, and the occupants of such cars on respective trips. Returns were filed, under oath, by 387 carriers, covering the calendar years 1923, 1924, and 1925.

The returns to the questionnaire were so voluminous and the subject matter so diversified that a complete detailed [fol. 23] analysis thereof is impracticable within the limits of this report. Different phases of the subject have been considered generally and particular practices and instances cited as illustrations.

The returns show that a substantial portion of the total mileage of private passenger-train cars, including so-called office cars, herein referred to collectively as private cars, was on the lines of carriers other than those owning the cars. The private cars thus moved over foreign lines were transported without charge. In other words, a pass was issued covering transportation of the private cars similar to that issued for the transportation of certain classes of persons as provided for in sections 1 and 22 of the act.

A general summary of the data included in the returns to the questionnaire is contained in Appendix A, which shows separately for Class I roads, Class II roads, and for switching and terminal roads the number of private passenger cars owned or leased, number of trips, number of occupants holding passes, and the number holding tickets. In Appendix B is contained a statement, by roads, of the mileage of private passenger cars during the years 1923, 1924, and 1925 on home and foreign lines, also of the mileage of foreign cars on home lines. The data submitted by carriers covering movement of foreign cars on home lines do not in some cases agree with the data submitted by the owning carrier covering mileage of cars on foreign lines. These discrepancies are, however, of little importance and no attempt was made toward correction thereof.

It will be understood that a private car includes a kitchen, dining room, staterooms, and observation or sitting room, together with storage space and sleeping quarters for the cook and attendants. The facilities thus provided for those traveling in private cars exceel the facilities of the ordinary coach or Pullman car.

The returns to the questionnaire show that the occupants of private cars are not restricted to officials and employees of the carriers but include in a large number of cases the families, relatives, and friends of railway officials traveling on passes or on tickets that would in most cases entitle them only to transportation in the ordinary coach. The following instances, which refer to movements of private cars of other carriers over the lines of the Atlantic Coast Line, Atchison, Topeka & Santa Fe,[1] New York Central, and Union Pacific, will illustrate the practices in these respects. The parties indicated were in charge of the cars.

[fol. 24] On the Atlantic Coast Line:

	Miles
1. Wife of director	664
2. Wife of director	1,327
3. Wife of chairman of board	3,000
4. Wife of vice president	54
5. Wife of president	108
6. Wife of senior vice president	340

[1] Hereinafter referred to as the Santa Fe.

7. Wife of vice president	651
8. Wife of vice president	389
9. Wife of vice president	108
10. Wife of chairman of board	274
11. Widow of deceased president	1,327
12. Daughter of chairman of board	631
13. Wife of general superintendent	155
14. Wife of vice president	464

On the Santa Fe:

1. Wife of president	2,242
Car deadhead, Los Angeles, Calif., to Chicago, Ill.	2,227
2. Widow and son of deceased vice president	2,242
3. Widow of deceased director	1,129
4. Widow of deceased president	2,006
Car deadhead to Kansas City, Mo.	1,791
Car deadhead, Chicago, Ill., to Los Angeles, Calif.	2,260
5. Widow of deceased president	2,260
6. Wife of president	2,242
Car deadhead, Los Angeles, Calif., to Chicago, Ill.	2,242
7. Wife of vice president	1,949
Car deadhead, Los Angeles, Calif., to Kansas City, Mo.	1,790
8. Widow of deceased director	1,705
9. Widow of deceased president	1,705
Car deadhead, Los Angeles, Calif., to Kansas City, Mo.	
10. Wife of Chairman of board	2,225

On the New York Central:

1. Wife of president	812
2. Wife of director	876
3. Widow of deceased director	438
4. Widow of deceased director (in privately owned car)	1,314
5. Wife of vice president	858
6. Wife of vice president	592
7. Wife of chairman of board	284
8. Wife of president	662
9. Wife of director	961

On the Union Pacific:

1. Wife of director	1,550
2. Wife of president	2,522
3. Widow of deceased chairman of board (in privately owned car)	1,980
4. Wife of vice president	507
5. Widow of deceased vice president	2,434
6. Wife of executive vice president	1,980
7. Wife of chairman of board	990

On December 9, 1925, Chicago, Rock Island & Pacific car No. 1911 left Chicago, Ill., for Los Angeles, Calif., and return. This car was occupied by the general freight agent of the carrier and by the vice president of the Studebaker [fol. 25] Corporation and wife together with four children and a maid. The mileage of this trip totaled 4,594 miles. On November 8, 1925, the same car traveled from Chicago to Champaign Ill., over the Illinois Central and was occupied by the system freight traffic manager of the carrier, who traveled on a pass, and by 15 other persons holding tickets. The returns to the questionnaire show that "most of these parties were engaged in the coal business."

On May 15, 1925, Pittsburgh & Lake Erie car No. 99 moved over the Louisville & Nashville from Louisville, Ky., to Cincinnati, Ohio. The car was in charge of the assistant to the president, and accompanying him were the following guests using tickets:

Vice president and wife, Standard Steel Spring Company. President and wife, Substance Furnace Company. Official and wife, Severance Manufacturing Company.

There is also a substantial use of private cars, both on home and foreign lines, by directors of carriers. For example, Appendix C shows movements of private cars occupied by directors of the Pennsylvania Railroad. Trips of less than 200 miles on foreign lines are not included nor are trips between Pennsylvania Railroad points such as Chicago and St. Louis, Mo., via the Chicago & Alton included.

Attention is called to the record of movements of private cars occupied by or assigned to a vice president of one of the eastern carriers, which is shown in Appendix D. The

same official is an executive of several other carriers in different parts of the country.

During the three year period the eight private cars of the New York, Chicago & St. Louis[1] traveled 254,814 miles on foreign lines while foreign line cars traveled only 2,[illegible] miles on that line. An analysis of the movements of these eight cars on trips involving both home and foreign lines is contained in Appendix E. These trips included trips to Florida, California, Michigan, Maine, French Lick Springs, Ind., Hot Springs, Ark., and White Sulphur Springs, W. Va. Included among the occupants on numerous occasions were the wives of officials and on other occasions the parties included guests holding tickets.

The movement of private cars to resorts commonly patronized by those seeking recreation or amusement, and located on foreign lines, is very noticeable. For example, the total mileage of private cars of other carriers over the Atlantic Coast Line leading to Florida during the three year period was 456,[illegible], and over the Richmond, Fredericksburg & Potomac was [illegible]. In considering these figure it is to be borne in mind that the latter line is only 116 miles in length. The return of the Maine Central shows that the mileage of foreign private cars over that line was 41,521, which is almost twice the mileage of Maine Central [fol. 26] private cars on its own lines. During the same period private cars of the Maine Central were moved [illegible] 2,028 miles over other lines.

There is also an extensive use of private cars on short lines industrial roads, and [illegible] in the interest of some party other than the [illegible] mileage of private cars used by the latter lines is [illegible] on foreign lines, and in numerous instances the home stations of the cars and the movements thereof are so far removed from the vicinity of the owning road that it is difficult to conceive the circumstances under which such movements could have been in the interest of or connected with the operation of the road owning the car. For example, the private cars of the Interstate Railroad made 4,296 miles on home lines and 21,344 miles on foreign lines, the cars of the

[1] Hereinafter referred to as the Nickel Plate.

Louisiana & Pacific made 167 miles on home lines and 61,046 miles on foreign lines, including travel for the account of the Longview, Portland & Northern; the cars of the Midland Terminal made 113 miles on home lines and 19,027 miles on foreign lines; the cars of the Minneapolis, Northfield & Southern made 160 miles on home lines and 15,058 miles on foreign lines; and the cars of Piedmont & Northern made 2,000 miles on home lines and 73,888 miles on foreign lines.

As a further illustration, attention is called to the situation disclosed with respect to the Louisiana & Pacific. This was one of three sawmill roads which composed the so-called Shreveport, Alexandria & Southwestern system, 91 miles in extent. The roads were owned and operated as subsidiary companies by the Long Bell Lumber Corporation, which has mills and plants in various sections of the country. According to Poor's and Moody's Manuals the following Long Bell Corporation officials are also officers of the subsidiary railways: Chairman, president, two vice presidents, and the secretary and comptroller. The carriers' replies to questions 2 and 3 of the questionnaire are reproduced in order to show clearly the cars and assignments:

Question 2. Statement of business, official, or other private passenger-train cars owned or leased and transported free or at less than published tariff rates during the years 1923, 1924, and 1925:

Car	Initial	Number or name
	L. & P. Ry. Co.	Kymokan.
	L. & P. Ry. Co.	100 (Previously Kymokan sold May 8, 1924).
	L. & P. Ry. Co.	101 (Acquired from L. P. & N. Ry. Co., July 15, 1924).

If assigned, to whom: Unassigned. These cars were owned by Louisiana & Pacific Railway Company which, with the Sibley, Lake Bisteneau & Southern Railway Company and the Woodworth & Louisiana Central Railway Company comprise the "Shreveport, Alexandria & Southwestern Railway System." The cars were used jointly by general officers of these system lines and also by general officers of the Mississippi Eastern Ry. Co. and Longview, Portland &

Northern Railway Company, some of whose officers and directors are also officers and directors of the "Shreveport, Alexandria & Southwestern Railway System" lines.

[fol. 27] Question 3. Home cars on home railroad:

None. Headquarters of car located off lines. Explanation: The business car of these lines is held at Kansas City, Mo., at which point are located the general offices of respondent.

These cars with home station at Kansas City, Mo., the headquarters of the Long Bell Corporation, made 167 miles on home lines and 61,046 miles on foreign lines, while these roads were used for a total of 60 miles by private cars of foreign lines. Most of the trips were made between Kansas City and Longview, Wash. There were several so-called inspection tours which embraced Mississippi, Louisiana, and Texas destinations. The home line mileage on these trips ranged from 5 to 88 miles and the foreign line mileage ranged from 2,500 to 2,559 miles. A list of ticket passengers on the trips of this system's cars, together with the advantages accruing to the families of the officials, indicates the real purpose of the cars. Included among the ticket passengers are the following Long Bell Lumber Corporation officials and employees:

Vice president; Secretary to vice president; Assistant to vice president; General manager of Longview farm and wife; Sales manager of sash and door department; Manager of mercantile department; Mill manager; Second secretary to vice president; Superintendent of construction; Third secretary to vice president; Clerk in mercantile department; Treasurer and wife; Architect; Landscape architect; Advertising manager; Chief clerk; Mill superintendent.

The returns show 65 passages on passes and 55 on tickets. Various members of the families of officials, including maids and valets, comprise a large portion of the travelers on both pass and ticket transportation. A statement of the movements of Louisiana & Pacific private cars on the Union Pacific was taken from the latter's return and is included as Appendix F.

The returns with respect to the Nevada Northern also illustrate how a small road with several private cars and

with important non-car corporate interests makes use of the private car. This road according to Poor's and Moody's Manuals operates 165 miles of broad-gage line in Nevada. The road is owned by the Nevada Consolidated Copper Company, which is controlled by the Utah Copper Company, which in turn is controlled by the Kennecott Copper Corporation. The same interests own or control the Copper River & Northwestern Railway in Alaska. Officers and directors of the Nevada Northern are officers or directors in one or more of the related corporations, namely: Copper River & Northwestern Railway, Nevada Consolidated Copper Company, Utah Copper Company, and Kennecott Copper Corporation. The return of the Nevada Northern shows that the road owns two private cars: one, the N. N. 101, has headquarters on the line at East Ely, Nev., while the other car, N. N. 100, is identified in the returns as follows: "Note: Home station of Nevada Northern 100 is Jersey City, N. J. (Erie Railroad)." This car was used extensively by the president of the Nevada Northern and by the president and vice president of the Copper River & Northwestern. A third car, which was moved extensively on the account of the Nevada Northern, is the car "Cyprus," which, according to the return, is owned by a vice president of that railway. The extent of the travel of cars charged to the Nevada Northern on the Western Pacific, Southern Pacific, and Union Pacific is shown in Appendix G.

The return shows that in most instances the owner of the "Cyprus" traveled as vice president of the Nevada Northern, but at other times he traveled as an official of the Bingham & Garfield. The return of the Ray & Gila Valley in referring to movements of the same official's car, "Cyprus," stated: "We have kept no record of the movements of * * * car on own line and were, therefore, delayed since receipt of your second request in searching out the dates of his semi-annual visits to the property in Arizona." This return also showed with respect to occupation that the official referred to "is the president and active executive in charge of operations of the Jackling-Hayden-Stone group of copper mines and subsidiary railways."

The returns show that a substantial portion of the total mileage of private cars, especially on foreign lines, was

what is commonly referred to as "deadhead" mileage, that is, the cars were not occupied, except in some instances by an attendant. The purpose of the movements is to return the cars to their home stations or to move them to stations where they are to be occupied. On the Baltimore & Ohio and the Michigan Central approximately 3 per cent of the total mileage of foreign private cars was deadhead. On the Cleveland, Cincinnati, Chicago & St. Louis the percentage was 4, on the Spokane, Portland & Seattle 5, on the Boston & Maine over 9, on the New York, Chicago & St. Louis 11, on the Richmond, Fredericksburg & Potomac over 12, and on the Atlantic Coast Line over 16.

The returns show numerous instances where private cars were deadheaded to and from shops for repairs or changes. Also worthy of consideration are the matter of free switching service and free storage for private cars. A large number of the private cars covered by the returns are held at off-line stations without orders. Many are so held at New York and the returns indicate that the matter of storage and switching of these cars is of considerable importance from the standpoint of operating expenditures.

[fol. 29] In numerous cases cars were routed from the Pullman Company by officers of carriers, and such cars were moved without charge by the carriers. The movements of Pullman private cars as stated by railway officials and others over the Union Pacific and New York Central are summarized in Appendix H.

Numerous instances are shown where private cars of the carriers were loaned to officers of other carriers. As an illustration, Missouri Pacific car No. 1 was loaned on May 15, 1925, to the chairman of the board of the Manufacturers Railway for a trip from St. Louis to Louisville. The returns show that this official used a pass and that he was accompanied by seven persons holding tickets. Union Pacific car 101 was used for a trip from New York to Colorado Springs, Colo., during July and August, 1923, and was occupied by the widow and daughter of a former director, holding passes, and by five other persons holding tickets.

Many private cars which were transported free, or at less than tariff rates, are of private ownership as distinguished from carrier ownership. For example, Union Pacific car No. 1900 is owned by the widow of a former chairman of the board of one of the western carriers. Attention

is called to the movement of this car during the period from July 16 to September 3, 1923, as indicated below:

July 16, 1923	Ogden, Utah, to Oakland Pier Calif	
July 16, 1923	Oakland to San Francisco Calif	Deadhead
July 17, 1923	San Francisco to Santa Barbara Calif	
July 30, 1923	Santa Barbara to Los Angeles Calif	Deadhead
July 31, 1923	Los Angeles to Santa Barbara Calif	Deadhead
Aug. 14, 1923	Santa Barbara to Los Angeles Calif	
Aug. 15, 1923	Los Angeles to Santa Barbara Calif	
Aug. 29, 1923	Santa Barbara to Los Angeles Calif	
Aug. 29, 1923	Los Angeles to Santa Barbara Calif	Deadhead
Sept. 1, 1923	Santa Barbara to San Francisco Calif	
Sept. 1, 1923	San Francisco to Oakland Pier Calif	Deadhead
Sept. 3, 1923	Oakland Pier, Calif., to Ogden Utah	

The private cars of railroad officials are intended to be offices on wheels for those whose duties require considerable travel over the lines and which used for that purpose are an important factor in carrying on the business of the road. It is seldom, however, that these duties necessitate a movement of the car over other lines. In some cases such a movement may be justified for business reasons, for example, where it avoids a reverse movement over the home line. But the returns to our questionnaire indicate that private cars are often used for other than business purposes by railroad officers, their relatives, and friends. Moreover, they appear to be used in some instances for the benefit of an industry which controls the railroad. In other instances, their use in entertaining shippers may be for the purpose of obtaining business for the railroad. These and other [fol. 30] abuses are apparent from the returns, but we are here concerned primarily with the legality of the free trans-

It was contended on behalf of the express companies that the custom of the express companies to exchange franks was one of long standing and presumably known to Congress, and that there was no record of any protest against it to or by this commission, or to Congress, nor any suggestion in any speech or report that it was supposed to be detrimental to the public interest, or that it was intended to be prohibited. On the other hand, it was contended for the United States that the only section of the interstate commerce act which relates to the carriage of property free or at reduced rates is section 22, and that there is nothing in it which by any possible construction can be taken as covering the granting or interchanging of franks, applying to the transportation of property by the express companies.

In disposing of the case and in affirming the decrees of the lower court the Supreme Court said:

We are clearly of the opinion that, without doing violence to the language used in section one—including the proviso—

its terms can not be held to include the transportation of goods

The question was raised [illegible] Legality of Express [illegible]

The free carriage [illegible] of property is contrary to the general principles to be found in the act to regulate commerce, as [illegible] sections 2, 3, and 6. The same principles are [illegible] more strongly in the legislation accompanying the [illegible] act and which was enacted in aid of its enforcement [illegible] the punishment of those who offend against [illegible] Any free carriage of passengers that is now lawful is contained in the form of exceptions to the general principle to be found in the so-called antipass provision of section 1 of the act. Any free carriage of property that is lawful is to be found in the exceptions noted in section 22 of the act. While the free carriage of certain of the excepted classes of passengers has thus been authorized even when traveling for pleasure or for their personal benefit, the spirit of the whole act forbids the free carriage of property except where public interests are involved under the conditions specified in section 22

This decision was reaffirmed in Legality of Express Franks, 69 I. C. C. 627, decided July 10, 1922. The findings as to express companies in these respects are applicable to other carriers.

Any free carriage of property that is lawful is to be found in the exceptions noted in section 22 of the act. Compare Int. Com. Com. v. Balt. & Ohio R. R., 225 U. S. 326; Arizona Rates, Fares and Charges, 61 I. C. C. 572; Pacific Engineering & Construction Co. v. C., R. I. & P. Ry. Co., 56 I. C. C. 247. Section 22 provides in part that:

* * * Nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat. * * *. Nothing in this Act shall prevent any carrier or carriers subject to this Act from giving reduced rates for the transportation of property to or from any section of the country with the object of providing

relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster, if such reduced rates have first been authorized by order of the commission (with or without a hearing); but in any such order the commission shall define such section and shall specify the period during which such reduced rates are to remain in effect.

The principal opposition to the proposed report came from the Association of Railway Executives. It is argued on behalf of this association that the free carriage of railway officials and employees authorized by the act includes a private car of another line occupied by one or more of them. In support thereof it is urged that such free carriage is universally recognized as not confined to the persons but includes their baggage, although baggage is property and the act does not specifically authorize its free transportation.

Baggage is usually transported without charge in addition to the passenger's fare, subject to certain restrictions as to weight and other matters. It is obvious that a person can not travel without certain property, such as clothing, and the transportation of this property is merely incidental to the transportation of the passenger. While the transportation of baggage may be spoken of as free, it is in reality covered by the passenger's fare. The property which may thus be transported without separate charge is defined in the tariffs, and when the weight permitted is exceeded separate charges are provided. Naturally, a person traveling on a pass is generally accorded the same baggage privileges as other passengers, and apparently he would have to pay the same charges as others on excess weight. There [fol. 32] are other limitations on the property which may be transported as baggage without separate charge; for example, such charges are often provided on bicycles and baby carriages. Recently certain carriers have provided for the checking of automobiles in baggage service at stated charges, which would apparently have to be paid whether the passenger is traveling on a pass or ticket. Such charges for the checking of certain articles are no doubt made because most passengers do not travel with these articles, and they are not considered ordinary or necessary baggage. In other words, their transportation is not such

an ordinary and necessary incident to the transportation of the passenger as to require or warrant their transportation without additional charge. While the transportation of a private car may be in a sense incidental to the transportation of the persons riding therein, the use of such cars is certainly not so general that they may be considered an ordinary or necessary incident to the transportation of the passengers, as in the case of baggage. It seems clear from the foregoing that the free transportation of a private car can not be justified upon the same principle as the transportation of baggage.

As a matter of fact, the baggage tariffs specifically prohibit the checking of numerous articles which are commonly included in private cars, such as chinaware, foodstuffs, and furniture. Not only that but such articles beyond question would be subject to charges if shipped by freight or express. It is strange indeed if a railroad official is entitled to have articles transported free in a private car which could not be checked and would be subject to charges if shipped in any other manner. Surely if a person riding on a pass must pay to check a bicycle or automobile, the principle of free baggage can hardly be invoked in favor of a private car. A person riding on a pass is not entitled to have anything transported free which is not covered by the fare paid by any other passenger.

In our view it is too far-fetched to say that because a person lawfully entitled to use a pass may have transported free a limited amount of baggage he may also bring and have transported free a private car embracing a kitchen, dining room, stateroom, sitting room, and necessary equipment, supplies, and attendants. According to the views advanced on behalf of the railway executives the family, relatives, and friends of the official or employee in charge of the private car being transported free may without objection likewise be accommodated therein. And when the car is no longer needed it may, under their interpretation, be sent over foreign lines to its home station without charge, or if the car is at its home station and is desired elsewhere on foreign lines for use it may be brought without expense. Free transportation is contrary to the general policy of the act and the definiteness and clarity with which Congress has [fol. 33] specified the extent to which free transportation

may be afforded by carriers subject to the act precludes the construction which counsel would have us place upon the pass provisions thereof.

The argument of the Association of Railway Executives that the carriers may lawfully haul the private cars of other lines without charge is also predicated on the theory that such a car is an instrumentality of commerce rather than an article of commerce. We are thus brought to a consideration of the question of when railway equipment generally may be transported without charge. Of course, a carrier may transport its own property without the payment of tariff charges. It would serve no useful purpose to require a carrier to transfer money from one pocket to another in payment of charges. Likewise, property which a carrier has hired or rented for the performance of its common carrier duties may be transported the same as property which it owns. It is well known that freight cars and to some extent passenger cars move freely over foreign lines, and it may be helpful to consider the terms on which such cars are handled.

Freight cars in service are generally interchanged between the principal carriers throughout the country under rules of the American Railway Association. The carrier in possession of the car pays the owning line a certain amount for each day the car is on its line. This is referred to as per diem and is in the nature of rent for the use of the car. It is paid whether the car is loaded or empty, as the empty movement is considered incidental to the loaded movement, and the carrier in possession may permit an empty car to be loaded with revenue freight. This use of the freight cars of another carrier relieves the carrier in possession of the burden of furnishing its own equipment, which is a distinct benefit, and it participates in the revenue from the freight. Freight cars in regular service are not subject to transportation charges but such cars are subject to charges when the transportation is not in regular service. The consolidated classification provides certain charges per car per mile for the transportation of all kinds of railway equipment on their own wheels. For example, dining, parlor, and sleeping cars are charged from 23 to 30 cents per mile in the various territories. These charges apply on new cars moving from the place of manufacture

to the home line before being placed in service, also on cars moving empty to and from repair shops off the home line, and on any other movements over foreign lines not in regular service. Apparently a car is in service when it is under load or has carried a load and is returning or seeking another load. In other words, so long as a car is being handled for revenue purposes, it is in service, and not subject to charges; but when it is transported solely for the benefit of the owning line, the latter must pay for such transportation on another line.

[fol. 34] Privately owned freight cars are also used by the carriers in transporting property of the owners. An allowance of so much per mile is paid by the carrier to the owner for the use of the car. This is based on the empty as well as the loaded movement, but if the empty movement exceeds the loaded movement the mileage allowance on the excess must be refunded, and in addition charges are assessed for the transportation of the car. Otherwise, no charge is made for the handling of a privately owned car in service, as its use benefits the carrier and is for revenue purposes. The charges in the consolidated classification for the transportation of cars not in service apply to privately owned as well as carrier equipment, no distinction being made because of private or carrier ownership.

Passenger cars of one carrier are sometimes operated over the lines of other carriers in maintaining through service. The terms on which this is done are a matter of contract, but in the absence of other arrangement the owning line is paid certain amounts per mile or per diem under rules of the American Railway Association. As in the case of freight cars, no charges are assessed for the handling of cars in service, but cars not in service are subject to the charges in the consolidated classification. The criterion for determining when a passenger car is in service would seem to be the same as in the case of a freight car; that is, whether the car is being handled for revenue purposes in the interest of all the carriers in the through route or solely for the benefit of the owning line.

Special, privately owned, or chartered cars for the exclusive use of special parties are transported in passenger trains under tariffs which provide for certain minimum

It will be seen from the foregoing that tariff charges are provided for the transportation in freight trains of both carrier and privately owned cars of all kinds, when they are handled solely for the benefit of the owner and not for revenue purposes. It would not be seriously urged that such transportation could be rendered free if any attendant or other person having a pass should ride in the car. The tariffs also provide minimum charges for the transportation in passenger trains of special, privately owned, or chartered cars for the exclusive use of special parties.

Apparently these minimum charges would not be lessened or affected in any way if a person or persons having passes should ride in the car. All of these charges show that there is nothing in the nature of railway equipment which justifies its transportation without charge, except when it is being handled for revenue purposes in the interest of the carrier performing the service. Even then the revenue from a passenger car used exclusively by a special party must be sufficient to warrant its transportation.

The propriety of tariff charges for the movement of railway equipment on its own wheels has been recognized by us in numerous cases. In two of them in fact we found that the charges assessed on freight cars were applicable even though they were transported under load. Pacific Engineering & Construction Co. v. C., R. I. & P. Ry. Co., supra; McCloud River Ry. Co. v. S. P. Co., 56 I. C. C. 287. Although charges are not generally assessed on cars under load, the charges assailed in the cases cited were upheld on the ground that the carriers had never agreed to accept the cars in interchange service. It was recognized that loaded cars are presumed to have been accepted in interchange service, but this presumption was found to have been overcome under the circumstances of these cases. Stated in another way, the charges were found applicable because the carriers had not hired the cars and they did not pay the usual mileage allowance for their use. In a more recent case we found that the charges assessed on certain cars hauled under load were not applicable because the cars had been accepted in interchange service and the mileage allowance was paid for their use. Haffner Thrall Car Co. v. N. P. Ry. Co., 146 I. C. C. 47. The thory underlying these decisions is that a carrier may not assess charges on [fol. 36] a car which it has hired the use of, but it may and should assess charges when it has not hired the use of the car even though it is hauled under load.

The transportation of a private car of another carrier is ordinarily for the benefit of the owning line or its officials and not for revenue purposes. While ticket passengers may sometimes occupy such a car, they do so by invitation, and the carrier performing the transportation is not at liberty to make use of the car by putting other passengers in it. The returns to our questionnaire indicate that it

is seldom, if ever, that the number of ticket passengers is sufficient to make the hauling of the private car of another carrier profitable to the carrier performing the service. This is further indicated by the additional fact that such passengers apparently do not pay the surcharge, which is assessed on persons riding in Pullman and privately owned or chartered cars. Indeed, the few ticket passengers sometimes riding in the private car of another carrier could probably be accommodated in other equipment that must be hauled anyhow, and the transporting carrier would receive more revenue if they rode in an ordinary Pullman car. Under these circumstances a carrier hauling the private car of another line can not be said to have hired its use, as it would have no interest in doing so and pays no rental therefor. Even if car hire should be provided on private cars, it would obviously be a mere subterfuge which could not change the legality of the practice. Our conclusion is that the transportation of the private car of another carrier is not of such advantage to the carrier performing the service as to warrant its performance without charge, on the same principle as the free handling of revenue producing equipment.

The Association of Railway Executives asserts that the carriers have always hauled the private cars of other lines without charge, that this practice has been well known to the commission, and that we have expressly approved it. It is contended, therefore, that we have interpreted the act as permitting the practice, and cases are cited to the effect that such an administrative interpretation is entitled to considerable weight where it is long continued and uniform.

In support of this contention it is pointed out that our conference ruling No. 95 and our pass regulations of 1917 both prescribed a form of pass for railway officials and employees which included the word "car." Of course, such a pass would be proper for the movement of a home-line private car, and it is understood that the practice is to issue passes for such cars, at least on some lines. But the Association of Railway Executives urges that the form of pass prescribed applied to foreign-line cars, since it provided for naming the carrier, which was not required in the case of a pass for the officers or employees of the home line. [fol. 37] The form of pass does not specifically indicate whether it is for home or foreign-line cars or both. It

might in fact be construed as including any kind of a car, even though subject to tariff charges. Under these circumstances we think that the pass form should be given a construction in harmony with the law. Certainly we never intended to approve the practice of issuing passes for the private cars of other lines. However, our conference rulings have all been canceled, and our pass regulations will be amended so as to make clear that a car pass may be issued only for home-line cars.

It is also argued that where our pass regulations refer to passes for sleeping, parlor, *and other accommodations*, the words in italic include a private car of another line. We think those words were meant to cover such similar accommodations as a stateroom or berth on a steamer. A private car of another line can not be regarded as an accommodation furnished by the carrier issuing the pass. We do not see how the words in question can be given the construction sought.

Our attention is not directed to any decision of a formal or informal nature in which we have approved the practice of handling private cars of other lines without charge, and diligent search has failed to disclose any such decision. In two cases we referred to the use of "car and party" passes by officers of so-called tap lines or industrial lines as being improper and unlawful. The Tap Line Case, 23 I. C. C. 277, 298; Colorado Free Pass Investigation, 26 I. C. C. 491, 494. The only other case in which any consideration has heretofore been given to the free transportation of private cars was The Five Per Cent Case, 31 I. C. C. 351. At page 410 of that report we referred to revenue which the carriers might have derived by charging tariff rates on private cars handled free. In effect we told the carriers that they should look to this among other means of increasing their revenues, but apparently they have not heeded our recommendation. The lawfulness of the practice was not brought in issue and was not passed upon in that proceeding. Clearly we have never ruled that private cars may lawfully be transported without charge for other carriers or their officials.

It may be assumed that the practice of hauling the private cars of other lines without charge prevailed at the time of the passage of the act to regulate commerce. That, however, does not indicate an intention on the part of Congress

to permit the practice, since, as stated in our third annual report, the law aimed at the correction of the abuses of free transportation. Nor can the long existence of the practice of issuing passes for foreign-line private cars be regarded as legalizing it. As previously stated, in American Express Co. v. United States, supra, the Supreme Court held [fol. 38] that an express company could not lawfully issue franks to certain classes of persons for the transportation of property, notwithstanding the contention that the custom of issuing such franks was one of long standing and no protest against the practice had been made to or by the commission. This is the the first time that the lawfulness of the practice of issuing passes for foreign-line private cars has been brought in issue before us. Of course, good faith might be urged in defense of past violations, but obviously it could not be so urged in respect of a violation after the law has been construed by this commission.

It is urged that while the practice of transporting foreign-line private cars without charge is lawful our investigation has shown that the courtesy extended as between roads has in some instances been abused. It is proposed to correct such abuses by the adoption of a code of ethics limiting such courtesies and calling for reports to be rendered covering the movement of private cars on foreign lines. Counsel stresses the point that although the practice of transporting private cars without charge is of long standing we have not declared it unlawful. As previously stated, this is the first time the legality of the practice has been before us for decision. Apparently it is the first time the practice has been given serious consideration by the Association of Railway Executives since only after our investigation were the abuses of what they term a lawful courtesy discovered. There is no more reason for construing our failure to declare the practice unlawful as approving the practice, than there is for construing the failure of the executives to correct the long-existing abuses as approving them. After observing our finding that the transportation of private cars over foreign lines should be paid for through the assessment of a just and reasonable charge the executives will still have a duty to perform in eliminating unnecessary use of private cars and in thereby promoting efficient and economical management as contemplated by the act.

The Chicago & Eastern Illinois was the only carrier which filed exceptions to the proposed report. It urges that the assessment of charges for the movement of private cars over foreign lines would handicap it in the solicitation of traffic in the Southeast and Southwest. This line is a part of through routes to and from points in those territories which it can reach only over the rails of its connections, while certain competitors such as the Illinois Central and the Santa Fe extend all the way to many of the important southeastern or southwestern points. Apparently the Chicago & Eastern Illinois has been sending its private cars over the lines of its competitors as well as other carriers for the purpose of soliciting traffic in their territory. It is not clear why the use of private cars is so important in the solicitation of traffic, which is ordinarily [fol. 39] handled by traffic representatives, such as this line has at various points in the Southeast and Southwest. During the three years covered by our questionnaire, the private cars of the Chicago & Eastern Illinois traveled 28,274 miles on foreign lines, while it hauled the private cars of other carriers 44,223 miles. The assessment of reasonable charges for such movements would, therefore, have been to the advantage of this carrier.

Reciprocity between carriers is no justification for the free transportation of private cars. It will be observed that railway equipment generally which is not in revenue service is not handled on that principle, and it could not be so handled lawfully. Moreover, the returns to our questionnaire show that there is seldom a fair balance between the service performed by different carriers in transporting the private cars of each other. On the contrary, the returns show that there is often a wide difference in the relative amount of service performed in hauling such cars. No one has contended that the theory of reciprocity warrants the free handling of private cars. Transportation must be paid for in cash and not in commodities or services. In re Contracts for Free Transportation, 16 I. C. C. 246; United States v. C. I. & L. Ry. Co., 163 Fed. 114; Louisville & Nashville R. R. Co., v. Mottley, 219 U. S. 270.

As heretofore pointed out, the tariffs provide certain minimum fares and revenues for the movement of special, privately owned, or chartered cars, which are evidently intended to cover the service of transporting the car. This

is apparent from the fact that the charges are the same whether the car is occupied by 1 passenger or 25. Especially in the case of cars moving empty or in charge of porter, it is manifest that the minimum fares and revenue are intended to compensate for the movement of the car rather than its contents. Apparently the only material difference between the cars on which these minimum charges apply and the private cars of other carriers is the matter of who owns or is using them. In so far as these charges do not apply to the private cars of other carriers, they are unjustly discriminatory and unduly preferential and prejudicial. See In the Matter of Restricted Rates, 20 I. C. C. 426, wherein it was found in violation of sections 2 and 3 to charge less for the transportation of railway coal than the rates charged on commercial coal. This decision was upheld by the Supreme Court in Int. Com. Com. v. Bali. & Ohio R. R., supra.

We find that the transportation or movement of private passenger cars, including so-called office cars, by one carrier for another or its officials, free or at other than published tariff rates is contrary to the provisions of the interstate commerce act. The assessment of a just and reasonable charge by carriers transporting private cars for others, and for services rendered in connection therewith, is not only required by the act but will be [fol. 40] in keeping with efficient and economical management.

This finding does not extend to the point of saying that it is unlawful for private cars of one carrier to be transported over the lines of other carriers, but is confined to the assertion that under existing law the transportation of private cars on foreign lines should be paid for through the assessment of a just and reasonable charge.

As shown in Appendix A, a substantial percentage of the occupants of private cars hauled free, or at less than tariff rates, were business associates, relatives, or friends holding tickets which entitled them only to transportation in the ordinary coach. A total of 22,391 passenger-miles were traveled by such persons in private cars of the Nickel Plate and a total of 208,203 passenger-miles were traveled by such persons in private cars of the Chicago, Rock Island & Pacific during the three-year period. The returns of other carriers show similar travel.

Carriers according passengers the comforts and facilities of private cars, including berth and other accommodations, are treating unequally and unfairly the passengers accorded the ordinary coach facilities but who are charged at the same rate as those traveling in private cars, and they also discriminate against those who pay the surcharge for riding in ordinary sleeping or parlor cars and privately owned or chartered cars.

It is provided in section 2 of the act:

That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

It is also provided in paragraph 1 of section 3 of the act:

That is shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The Association of Railway Executives urges that the question of whether it is unjustly discriminatory and unduly prejudicial to furnish private-car accommodations to [fol. 41] invited guests without charge depends upon the circumstances of each individual case. They seem to think that circumstances may warrant the furnishing of a berth and other accommodations in a private car without charge, provided only that the passenger has purchased a ticket entitling him to passage. We are unable to see how a berth

or other accommodations for which a tariff charge is usually made can be furnished free any more than a passenger can be carried without charge. A carrier which furnishes free a berth or other accommodations in a private car similar to those for which tariff charges would be assessed if the passenger rode in a Pullman car is clearly guilty of violating section 6 of the act.

It is suggested that the furnishing of a berth or other accomodations in a private car is merely a courtesy extended by one passenger to another. The furnishing of a berth or other accommodations in a Pullman or private car without charge to a person not lawfully entitled to free transportation is just as clear a violation of the spirit and plain intent of the act as carriage without the purchase of a coach ticket.

The railway executives further urge that a hearing must be held in each individual case to determine whether the circumstances and conditions are so similar as to warrant an order requiring the removal of the discrimination and prejudice. This argument sounds like that made by the carriers soon after the passage of the act to regulate commerce. It was contended then that a difference in circumstances and conditions warranted the issuance of passes to certain classes of persons, such as public officials. That contention was rejected in In Re Persons Free or at Reduced Rates by B. & M. R. R. Co., 5 I. C. C. 69, 78; and William H. Harvey v. Louisville & Nashville R. R. Co., 5 I. C. C. 15.

One of the fundamental purposes of the act is "to compel the carrier as a public agent to give equal terms to all" and "to cut up by the roots every form of discrimination, favoritism, and inequality." New Haven R. R. v. I. C. C., 200 U. S. 361; L. & N. v. Mottley, 219 U. S. 467; U. S. v. Union Stock Yard, 226 U. S. 286.

We further find that the transportation of persons in private passenger cars, including berth and other accommodations for which a charge is made in Pullman cars, at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory, unduly preferential of the former, and unduly prejudicial to the latter as well as those who pay the surcharge for riding in ordi-

nary sleeping or parlor cars and privately owned or chartered cars.

The carriers will be expected to cease and desist from the violations of the act herein found, but in view of the penalties provided for such violations, no order appears to be necessary.

[fol. 42] BRAINERD, Commissioner, dissenting in part:

The majority's decision is based upon information obtained by the commission from returns made to a questionnaire sent to Class I and II carriers. No hearing has been held and no opportunity for the introduction of evidence or the examination or cross-examination of witnesses has been granted. This report is adopted over the carriers' exceptions based in part upon a failure to accord them a full hearing. While I concur in much if not all that is said by the majority, I do not wish to be understood as approving the practice of adopting formal reports containing findings of fact or conclusions of law based upon an investigation, whether upon our own motion or otherwise, without having first held a hearing at which all parties have been afforded an opportunity to introduce evidence and examine and cross-examine witnesses in such manner as may be necessary to conform to the requirements of due process of law. The more liberal the practice, the more imperative the obligation to preserve the essential rules by which rights are determined.

I am authorized to state that Commissioners Woodlock and Porter concur in the views herein expressed.

Appendices, with the foregoing report, A to H, both inclusive, are omitted from this print but will be furnished the court and counsel in the form of the government print.

[fol. 43] EXHIBIT "C" TO PETITION

Interstate Commerce Commission, Washington, D. C.

December 26, 1928.

Notice to the Public

Since May 7, 1908, it has been the practice of the Interstate Commerce Commission from time to time to compile

and issue for public information its conference rulings upon questions raised or submitted in correspondence. Reissues have been made, which, besides embodying new conference rulings, have revised or rescinded previous rulings which had become obsolete. The last issue of conference rulings bears date August 1, 1917.

The Commission has considered the revision and possible enlargement of its conference rulings. Many of the rulings have been made obsolete, as the subject matter has since been dealt with in formal reports and orders of the Commission, or in various formal circulars. Others are incorrect, and should be modified or rescinded, because counter to subsequent acts of Congress. The conference rulings cover only a portion of the activities of the Commission. To correct and bring the outstanding rulings to date, without the formulation and inclusion of many like informal correspondence rulings upon other phases of the Commission's jurisdiction, would give undue emphasis to parts of its activities.

In the opinion of the Commission, although the rulings have served a very useful purpose in the past, it is not now practicable or desirable to revise and amplify them, or to continue their publication. Accordingly the Commission has ordered that the conference rulings be rescinded in their entirety and their use as authority be discontinued. This action has been taken without reference to the correctness of individual rulings.

By the commission, G. B. McGinty, Secretary.

[fol. 44] EXHIBIT "D" TO PETITION

Interstate Commerce Commission, Washington

In the Matter of Regulations to Govern the Forms and Recording of Passes, Issue of 1917

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 30th day of July, A. D., 1929:

The matter of issuing passes for private passenger-train cars being under consideration:

It is ordered that the Regulations to Govern the Forms and Recording of Passes, Issue of 1917, prescribed under an

order of the Commission, entered on July 8, 1916, be and the same are, hereby amended by adding between lines 11 and 12 in paragraph 15 the following:

A car pass may be issued only for cars owned by the issuing carrier or held by it under lease for use in its business as a common carrier. It may not be issued for other cars. This provision is not to be construed as prohibiting the issuance of passes for cars of lines operated as a part of the same system. See In the Matter of Private Passenger Train Cars, 155 I. C. C. 775.

It is further ordered that this order shall become effective on August 1, 1929.

By the commission, Division 4, George B. McGinty, Secretary.

[fol. 45] IN UNITED STATES DISTRICT COURT

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed December 17, 1929

The Interstate Commerce Commission *Commission*, one of the defendants in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiences contained in the petition, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the opening paragraph and subdivisions numbered 1 to 4, inclusive, of the petition, the Interstate Commerce Commission, hereinafter called the Commission, admits the truth of the allegations therein contained, except that the Commission disclaims information sufficient to form a belief as to the truth of the allegation contained in the opening paragraph to the effect that petitioners sue on behalf of all other carriers subject to the Interstate Commerce Act, which may have an interest in the premises, and the Commission demands strict proof thereof. Further and

more particularly answering subdivisions numbered 3 and 4 of the petition, the Commission admits and alleges that it made and entered the report of March 14, 1929, and the order of November 4, 1929, therein referred to, and admits that two documents marked Exhibits B and A which are filed with and as parts of the petition are true and correct copies, respectively, of the Commission's said report and of its said order.

II

Answering subdivision numbered 5 of the petition, the Commission admits that the allegations therein contained, relating to the provisions contained in its said order of November 4, 1929, are substantially correct. In this con- [fol. 46] nection, however, the Commission respectfully refers the court to the copy of its said order which, as heretofore said, is filed with and as part of the petition marked Exhibit A.

III

Answering the first paragraph of subdivision numbered 6 of the petition, the Commission admits that the allegations, therein contained, relating to the provisions of paragraph (7), Section 1, and of Section 22 of the Interstate Commerce Act, are substantially correct. In this connection, however, the Commission respectfully refers the court to said provisions of said Act for full and complete information in the premises.

Answering the allegations in the second paragraph of subdivision numbered 6 of the petition, which is to the effect that the now outstanding free tickets and free passes issued by each of the petitioners were given in exchange for similar interstate free passes issued by other carriers to its officers or employees, the Commission denies the truth of said allegation in so far as it is an allegation that the free tickets and free passes issued by each of the petitioners to the officers and employees of any particular carrier were given in exchange for free tickets and free passes issued to its officers or employees calling for similar, or an equivalent amount of, free transportation.

IV

Answering subdivision numbered 7 of the petition, the Commission admits that it is the right of a carrier issuing a

free pass, ticket or other evidence of free transportation to transport free over its line persons lawfully holding such free passes, free tickets or other evidence of free transportation. Except as so expressly admitted, the Commission denies the truth of each of and all the allegations contained in said subdivision numbered 7.

V

Answering subdivision numbered 8 of the petition the [fol. 47] Commission denies the truth of each of and all the allegations therein contained.

VI

Answering subdivision numbered 9 of the petition the Commission denies that at the time of the original enactment by Congress of the Interstate Commerce Act and at the time of each of the amendments made thereto, the practice of moving persons entitled to use, and using, free transportation in the private or public car of another carrier free and without imposing any charge for the movement of the car, was generally known to exist; denies that neither in the original Act to Regulate Commerce nor in any subsequent amendment is there contained any prohibition against said practice, and denies that Congress has either sanctioned or adopted an interpretation of said laws which would recognize such practice as lawful.

VII

Answering subdivision numbered 10 of the petition, the Commission alleges that the allegation, therein contained, that the practice of moving persons entitled to use, and using free transportation in the private or business car of another carrier free and without imposing any charge for the movement of the car, has always been well known to the Commission, is based upon speculation and that therefore, and because said allegation is incompetent irrelevant, and immaterial, the Commission neither admits nor denies that said allegation is true; and the Commission denies that it has ever either impliedly or expressly recognized such practice as lawful.

Further answering said subdivision numbered 10, the Commission admits that the portions of paragraphs (6) of

Section 1 and of paragraph (1) of Section 6 of the Interstate Commerce Act, therein set forth, are correct copies in part of the provisions of said paragraphs; admits and alleges that at the time of its decision herein involved, [fol. 48] tariffs filed with it failed in most cases to cover definitely and clearly the transportation by carriers, subject to the Interstate Commerce Act, of the private or business cars of other carriers subject to the Act in passenger service; denies petitioners' allegation that no tariff covering such transportation "has ever been filed with the Commission, as the Commission has well known", and alleges that petitioners' allegation that "no requirement was ever made by the Commission, up to the time of its order in this proceeding, that any such tariff should be filed" is incompetent, irrelevant and immaterial, and, therefore, neither admits nor denies that said last-mentioned allegation is true.

Further answering said subdivision 10 of the petition, the Commission admits that its Conference Rulings, up to the time that they were rescinded, as hereinafter mentioned, prescribed the form of pass set forth in said subdivision; denies that said subdivision contains an accurate and complete statement in respect of the form of pass prescribed by its pass regulations and, for accurate and complete information in the premises, respectfully refers the court to its Regulations to Govern the Form and Recording of Passes, Issue of 1917, a copy whereof is annexed to and made a part of this answer, marked Exhibit A; denies that its Conference Rulings and Regulations to Govern the Form and Recording of Passes, either by prescribing a form of pass or in any other way, recognized the lawfulness of the practice of moving persons entitled to use, and using, free transportation in the private or business car of another carrier free and without imposing any charge for the movement of the car; denies that Congress, in reenacting paragraph (7) of section 1 and section 22 of the Interstate Commerce Act, either ratified or adopted an interpretation of those provisions of law which would permit of, and recognize as lawful, said practice; admits that said Conference Rulings were rescinded by its order of December 26, 1928, a true copy whereof is filed with and as a part of the petition marked Exhibit C; admits that said Regulations to

[fol. 49] Govern the Form and Recording of Passes were amended by its order of July 30, 1929, a true copy whereof is filed with and as a part of the petition marked Exhibit D.

Further answering said subdivision 10, and particularly the last paragraph thereof, the Commission denies that its said last mentioned order of July 30, 1929, is an order within the meaning of paragraph (8) of section 16 of the Interstate Commerce Act. The Commission alleges that the provisions of said paragraph (8) of section 16 are applicable only to orders made under sections 3, 13 or 15 of said act; that its said order of July 30, 1929, was not made under any of those sections but was made under section 20 of said act in that it was an amendment to its Regulations to Govern the Form and Recording of Passes which had been prescribed in accordance with said section 20.

VIII

Answering subdivision 11 of the petition, the Commission admits the truth of the allegations therein contained.

IX

Answering subdivision 12 of the petition, the Commission denies the truth of each of and all the allegations therein contained.

Except as herein expressly admitted the Commission denies each of and all the pertinent and material allegations contained in the petition in so far as they conflict either with the allegations or denials of the Commission herein contained or with the statements of fact contained in the Commission's said report of June 21, 1929.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by Daniel W. Knowlton, Chief Counsel.

[fol. 50] *Duly sworn to by Frank McManamy. Jurat omitted in printing.*

REGULATIONS

TO GOVERN THE

FORMS AND RECORDING OF PASSES

PRESCRIBED BY THE

INTERSTATE COMMERCE COMMISSION

IN ACCORDANCE WITH SECTION 20 OF THE
ACT TO REGULATE COMMERCE

ISSUE OF 1917

Effective on January 1, 1917

(Superseding and canceling Regulations to Govern the Issuing and Recording of Passes of Steam Roads)

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

REGULATIONS

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(Superseding and canceling Regulations to Govern the Issuing and Recording of Passes of Steam Roads)

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

THE INTERSTATE COMMERCE COMMISSION.

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ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of July, A. D. 1916.

The subject of a uniform system for the issuing and recording of passes to be prescribed for carriers being under consideration, the following order was entered:

It is ordered, That the following Regulations to Govern the Forms and Recording of Passes, Issue of 1917, be, and the same are hereby, approved; that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Division of Carriers' Accounts; and that each of the said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, That the said Regulations be, and are hereby, prescribed for the use of carriers by rail (including electric railways), carriers by water, and sleeping car companies, subject to the provisions of the amended act to regulate commerce in the issuing and recording of passes; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to issue all passes and keep all pass records in conformity therewith; and that a copy of the said Regulations be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

It is further ordered, That the said Regulations are, and by virtue of this order do become, the lawful rules according to which all passes are to be issued and all pass records are to be kept; that each and every person directly in charge of the free transportation of any such carrier or of any receiver or operating trustee of any such carrier is hereby required to see to, and under the law is responsible for, the correct application of the said regulations in the issuing and recording of passes; and that it shall be unlawful for any such carrier or for any receiver or operating trustee of any such carrier, or for any person directly in charge of the free transportation of any such carrier or of any receiver or operating trustee of any such carrier, to issue any passes or to keep any pass records except in the manner and form in the said Regulations set forth and hereby prescribed, and except as hereinafter authorized.

It is further ordered, That any such carrier or any receiver or operating trustee of any such carrier may adopt additional record forms: *Provided, however*, That a list of such additional record forms, showing their use and their purpose, be first filed in the office of the Division of Carriers' Accounts, subject to disapproval by the Commission.

It is further ordered, That the said Regulations to Govern the Forms and Recording of Passes, Issue of 1917, shall become effective on January 1, 1917, and that this order shall supersede and cancel the orders of June 8, 1911, March 11, 1912, May 6, 1912, and June 28, 1915, in the matter of regulations to govern the issuing and recording of passes of steam roads.

By the Commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

REGULATIONS TO GOVERN THE FORMS AND RECORDING OF PASSES.

These regulations apply to all carriers of classes designated in the order whether passes are issued or are honored for transportation wholly within one state or otherwise, and whether the operated mileage or termini of any such carrier be located entirely within the limits of one state or otherwise.

Nonrevenue passenger service.

1. All nonrevenue passenger service, whether transportation, meals, or sleeping, parlor, or other accommodations, except as provided in paragraphs 39 and 42 to 51, inclusive, furnished by steam roads, electric railways, carriers by water, and sleeping car companies, subject to these regulations, shall be covered by passes as hereinafter prescribed.

General classes of passes.

2. Passes issued shall consist of not more than eight general classes, viz:

1. Annual or term passes for passage only.
2. Annual or term passes for meals and sleeping, parlor, and other accommodations, but not including passage.
3. Annual or term passes for passage, including meals and sleeping, parlor, and other accommodations.
4. Trip passes for passage only.
5. Trip passes for meals and sleeping, parlor, and other accommodations, but not including passage.
6. Trip passes for passage, including meals and sleeping, parlor, and other accommodations.
7. Commuter passes.
8. Telegraph passes.

(*a*) *Annual* passes are those good until the end of the calendar year without restriction as to the number of trips.

Term passes are those good for a specified period of time less than a year and without restriction as to the number of trips.

Trip passes are those good for a specified period of time and restricted to a single trip or to one round trip.

Commuter passes are those good for a specified period of time and restricted as to the number of trips. This form of pass need not be confined to suburban territory, but may be issued over any portion of a carrier's line.

Telegraph passes are those issued upon telegraphic or telephonic authority and restricted to a trip in one direction within a specified period of time.

(*b*) Carriers are at liberty to enlarge this classification of pass forms, provided it is done by subdividing any of the general classes, and provided further, that the record of pass stock received and distributed shows the distinctive features of pass forms so subdivided. (See par. 12.) It is not desired that carriers file with the Commission samples of their passes.

(*c*) If the number of passes to be issued for meals and sleeping, parlor, and other accommodations, including passage, is relatively small, carriers are permitted to indorse a pass of any class prepared for passage only so as to include such accommodations as are to be furnished. (See par. 54.)

Officers issuing and requesting passes.

3. Each carrier shall file with the Commission, on or before January 1 of each year: (*a*) A list of the names and titles of officers in whom is reposed the authority for the issuance of passes and over whose signatures passes will be issued, and (*b*) a list of the names and titles of officers having the authority to request passes of other carriers. (See par. 5.) Any changes in these lists in the course of the year must be reported promptly.

4. The names and titles of persons authorized to countersign passes and requests for passes need not be filed with the Commission.

5. Requests for passes for or on account of officers or employees of traffic associations, fast freight lines, demurrage and car-service bureaus, weighing and inspection bureaus, and other joint agencies maintained by or on behalf of carriers subject to these regulations, for transportation over the lines which are members of such associations may be made direct on such lines in the same manner as provided for requests for passes for or on account of a carrier's own officers or employees. (See par. 27.) Requests for passes over lines other than member lines must be made in one of the three following methods:

(*a*) Requests may be made over the signature of an officer of a member line if such officer's name has been filed with the Commission by such member line in compliance with paragraph 3 (*b*), with the counter signature of an officer or employee of the association.

(*b*) Requests may be made over the signature of an officer of the association if such officer's name has been filed with the Commission by one or more of the member lines in accordance with paragraph 3 (*b*) as having authority to request passes on account of the association

(*c*) Requests may be made over the signatures of officers of the association if such officers' names have been filed with the Commission in accordance with paragraph 3 (*b*) by the chief officer of the

association, provided such chief officer has been delegated authority to so act by the member lines.

Signatures of issuing officers.

6. Each pass (except a telegraph pass) must bear either the autograph or the facsimile signature of one of the officers named in the list referred to in clause (*a*) in paragraph 3.

7. Each pass bearing facsimile signature must be countersigned with ink, except as provided in paragraph 13, by an officer or responsible subordinate, who must be designated on the pass.

Pass stock.

8. The ordering of all pass stock must be confined to requisitions made by a single designated officer and delivery of the entire stock must be made to him. All vouchers or bills covering the cost of pass stock shall be approved by the officer making requisition therefor before they are carried through the accounts for payment. Unissued pass stock must be filed in such manner as to be accessible and convenient for examination.

Numbering passes.

9. All passes (except telegraph passes issued on telegraph blanks) shall be consecutively numbered before or immediately upon receipt from the printer or stationer. No two passes of the same general class shall bear the same number without an indicative letter prefixed or affixed. Unless all passes are numbered in one series, each general class adopted shall constitute a series of numbers and each subdivision of any general class adopted shall constitute a series of numbers with an indicative letter prefixed or affixed.

10. If a separate stock of passes is provided for each year the numbering must begin with 0 or 1 at the beginning of the year. If the same stock is used for two or more years the numbers may continue consecutively from year to year, commencing with 0 or 1 when desired, but not oftener than once in each calendar year.

11. If adherence to these rules would result in passes carrying numbers consisting of more than five figures, a new series of numbers beginning with 0 or 1 with a letter prefixed may be adopted, provided the letter so prefixed does not occur on any other class of passes.

Record of pass stock received and distributed.

12. A record of pass stock received and distributed must be kept by the officer ordering the pass stock. (See Form 9.) Each of the different forms and series of passes received must be entered on separate sheets or pages and must be recorded and distributed in numerical order. This record must show the form of pass, also the distinctive features of any pass prepared as a subdivision of any of the general classes as provided in paragraph 2(*b*). On the debit side of the record must be entered the entire pass stock received. On the

credit side must be entered all pass stock distributed among other officers or countersigning subordinates, all stock assigned to the officer ordering the stock and issuable by him, and all pass stock destroyed. (For the periods of retention see regulations to govern the destruction of records.)

Preparation of passes.

13. All passes must be filled out with a durable ink, either with pen or typewriter, or by printing, except that in case of emergency a trip pass may be filled out and countersigned by the use of indelible pencil.

14. Each pass issued must bear upon its face the name of the person to be accorded free transportation, who must be of a class named in section 1 of the act to regulate commerce as eligible to receive free transportation.

15. A pass may include, in addition to the person named thereon, a specified number of unnamed persons of any class eligible to receive free transportation, the number and the class to which such persons belong being specified upon the pass; e. g.,

Pass John Smith, car, and five officers and employees.
Account President, officers, and employees X. Y. & Z. Ry.
Pass John Smith and six employees.
Account Section foreman and laborers X. Y. & Z. Ry.
Pass One extra messenger when presented with letter signed by superintendent of Eastern Express Co. authorizing use and giving name of person to be passed.
Account Messenger, Eastern Express Co.

A pass for "John Smith and three children" is not a sufficient compliance with the provisions of this paragraph; it must be made so that the representation that they are the children of the person named shall affirmatively appear; e. g.,

Pass John Smith, one son, and two daughters.
Account Brakeman, X. Y. & Z. Ry.

16. The name of the person presenting the pass must appear upon it unless it be prepared similar to the third example of paragraph 15, and presented with letter authorizing use and giving name of person to be passed. Passes issued for the transportation of more than one person so as to be used by such persons separately must name the person actually using the pass. For instance, a pass to be used by John Smith and his daughter, separately, or a pass to be used by William Brown and one brakeman, separately, should read:

Pass John Smith and Miss Mary Smith.
Pass John Smith and daughter Mary.
Pass William Brown and Edgar Moore.

A pass issued to "John Smith and wife" or to "Mr. and Mrs. John Smith" is construed as if having the name of the wife appearing upon it and may be used by her in the absence of her husband.

17. Each pass must show, in accordance with the following, on what account it is issued:

(*a*) A pass for an officer or employee of the carrier issuing the pass must show the title or occupation of the person to whom it is issued, e. g.,

Pass John Smith.
Account Brakeman.

(*b*) A pass for a member of the family of an officer or employee of the carrier issuing the pass must show the name of such officer or employee, except as provided in paragraph 17 (*c*), his title or occupation, and the relationship of the person to whom it is issued, e. g.,

Pass Miss Mary Smith.
Account Daughter of John Smith, brakeman.

(*c*) A pass for the wife of an officer or employee of the carrier issuing the pass, which shows the husband's Christian name, may omit, after "Account," the name of such officer or employee, e. g.,

Pass Mrs. John Smith.
Account Wife of brakeman.

(*d*) A pass for an officer or employee of a carrier other than the carrier issuing the pass must show the title or occupation of the person to whom the pass is issued and the name of the carrier by which employed, e. g.,

Pass John Smith.
Account Brakeman, A. & B. R. R.

(*e*) A pass for a member of the family of an officer or employee of a carrier other than the carrier issuing the pass must show the name of such officer or employee, except as provided in paragraph 17 (*f*), his title or occupation, the relationship of the person to whom the pass is issued, and the name of the carrier by which employed, e. g.,

Pass Miss Mary Smith.
Account Daughter of John Smith, brakeman, A. & B. R. R.

(*f*) A pass for the wife of an officer or employee of a carrier other than the carrier issuing the pass, which shows the husband's Christian name, may omit, after "Account," the name of such officer or employee, e. g.,

Pass Mrs. George Brown.
Account Wife of clerk, A. & B. R. R.

(*g*) Every pass issued to a person other than an officer or employee of a common carrier or members of their families must state in the space provided for "Account" the reason for the issuance of the pass, e. g.,

Pass Mrs. Sarah Jones.
Account Charity.
Pass Mr. Henry Brown.
Account Traveling secretary, R. R. Y. M. C. A.

18. Every pass issued upon which meals, or sleeping, parlor, or other accommodations are to be furnished free must indicate the character of the accommodations to be furnished thereon, e. g.,

(*a*) When pass does not include passage (see Forms 2 and 5):

To occupy one stateroom.
To meals and berth.

(*b*) When pass includes passage and accommodations (see Forms 3 and 6):

Including parlor room.
Including meals and berth.

19. The territory in which or the points between which a pass will be honored must be shown upon it, e. g.,

From ——— to ———.
Between ——— and ———.
Over entire system.

20. The period of time for which a pass will be accepted for transportation must be indicated upon it, e. g.,

Until ———.
Good for one trip only until ———.
Expires ———.
If used within ——— days.

Requests for passes.

21. Passes shall be issued only upon written requests, or telegraphic requests confirmed by written requests, except as provided in paragraphs 23 and 24, and in accordance with the forms hereinafter prescribed as applicable.

22. All the information required to be shown on passes issued, as prescribed in paragraphs 14 to 20, inclusive, must be indicated on requests for passes. In addition to such information requests must furnish information in accordance with the following:

(*a*) The address of the person for whom the pass is requested.

(*b*) If request be made for a pass for or on account of an officer or employee of a carrier other than the carrier by which such pass may be issued, it must contain a statement that the person for whom the pass is requested is not prohibited by law from receiving free transportation. (Forms 16 and 17.)

(*c*) If request be made for a pass for a person other than an officer or employee, or the member of the family of an officer or employee, of a common carrier the request must give evidence, clearly set forth, or be accompanied by papers, showing the legality of the issuance of the pass requested. No form is prescribed for requests of this character.

23. Written requests for passes may be dispensed with in the following cases, provided the records of passes issued show the full

information required, and in addition state upon whose authority the passes were issued and the reasons for dispensing with written requests:

(*a*) For passes issued to employees engaged in the office in which the passes are actually prepared.

(*b*) For passes sent to employees attached to the office in which the passes are actually prepared but temporarily located at other points to travel upon instructions from such office.

(*c*) In cases of emergency requiring immediate use of pass and when there is insufficient time to procure written requests before issuance.

24. Carriers may, at their option, permit their principal officers to furnish passes to officers and employees, and to the members of families of officers and employees, of other carriers subject to these regulations, who are not prohibited by law from using free transportation, without requiring written requests, provided:

(*a*) That acknowledgments, in accordance with Form 22 hereinafter prescribed, be secured from the persons to whom or on whose account the passes are issued, or from an officer whose name has been filed with the Commission, in compliance with paragraph 3 (*b*), of the carrier on whose account the passes are issued; and provided further,

(*b*) That notices, in accordance with Form 23 hereinafter prescribed, be given the carriers on whose account the passes are issued through the officers of such carriers ordinarily authorized to issue requests on other carriers for passes (see par. 68); and provided further,

(*c*) That the records of the issuing carriers show upon whose authority the passes are issued.

Carriers should be prepared to furnish the Commission, when so required, a full report of passes issued without written requests under the provisions of this section.

25. Notices to other carriers advising of the issuance of passes without written requests must be made in duplicate, or legible impression copies must be taken of them, and the duplicates or impression copies must be retained by the issuing carrier.

26. Requests for passes, also acknowledgments received and copies of notices retained for passes issued without requests, must be filed in the office in which are filed records of annual or term passes or the stubs or carbon copies of trip passes, and in such manner as to be accessible and convenient for examination. The numbers of the passes issued must be noted upon the faces of the requests.

Signatures on requests for passes.

27. Requests for passes for or on account of a carrier's own officers or employees must be made over the signature of the person to whom or on whose account the passes may be issued or by a superior or ranking officer or employee. (See par. 5 regarding joint agencies, etc.)

28. Requests for passes for or on account of officers or employees of a carrier subject to these regulations, other than the carrier issuing the pass, must be over either the autograph or facsimile signature of one of the officers named in the list referred to in clause (*b*) paragraph 3. In case the facsimile signature is used the request must be countersigned with ink by an officer or responsible subordinate, who must be designated thereon. (See par. 5 regarding joint agencies, etc.)

29. Requests for passes for any persons not covered by paragraphs 27 or 28 must be made over the signatures of the persons making such requests.

Signatures of users of passes.

30. All passes must bear the signatures of the users, preferably in ink. On the back of each pass, other than a telegraph pass issued on a telegraph blank, must appear a statement that the holder is not prohibited by law from receiving free transportation, and that the pass will be lawfully used. This statement may be shown among other conditions, if any, and must be subscribed to by the holder.

31. A pass issued for a number of persons, but naming only one person, such as—

> John Smith, section foreman, and six employees of X. Y. & Z. Ry.
> George Jones and two daughters,

need be signed only by the person whose name appears on the pass.

32. A pass issued for a number of persons, the names of all appearing on the pass, such as—

> William Brown and Edgar Moore, brakemen,

must be signed by the users, whether the pass is used by one or by more than one of the persons named thereon; except that such pass when issued to the members of a family need be signed only by one of the persons using it.

33. A pass issued for a person without giving the name, such as—

> Pass one extra messenger when presented with letter, etc.,

need not be signed by the user. The letter or identification form which accompanies the pass must be indorsed by the user and collected and filed with collected trip passes.

Telegraph passes.

34. Telegraph passes may be issued in cases of emergency only and shall be confined to one-way passage. The issuance of telegraph passes shall be over the name of one of the officers named in the list referred to in clause (*a*) in paragraph 3 or that of one of the countersigning officers referred to in paragraph 7, and only within the territory over which such officers have authority to issue annual, term, or trip passes.

35. Telegraph passes must be issued either on telegraph blanks in accordance with Form 8 or on a special printed form of telegraph pass, showing the same data as required on Form 8 but similar in form to trip passes.

36. Copies of telegraph passes and of the telegrams authorizing issuance of printed forms of telegraph passes must be made by the issuing officer and filed with the stubs or carbon copies of trip passes.

37. If, after a telegraph pass is used, a trip pass is substituted therefor, the former should be filed with requests for trip passes as the authority for issuing the latter.

38. Except as provided in the preceding paragraph, used telegraph passes must be filed with used trip passes.

Tickets in lieu of passes.

39. Detectives and others engaged in similar work and, in cases of emergency, employees and others entitled to free transportation, may be furnished with regular passenger tickets or may be permitted to purchase tickets and have the amounts paid therefor afterwards refunded. In such cases the ticket agent's report of the tickets "without value," or the vouchers refunding the amounts paid for the tickets, must be supported by the authority of one of the officers named in the list referred to in clause (*a*) in paragraph 3. Applications for refunds of fares paid or the authorities for such refunds must show the same information as is required to be shown on the requests for passes referred to in paragraph 22. When detectives and others engaged in similar work are known by number only and it is desired that their names shall not appear in the records, the numbers may be substituted for the names on the authorities referred to above. Carriers must be prepared to furnish adequate evidence that the persons so designated were actually engaged in the service shown on the authorities.

40. The use of a special form of free ticket according to the holder certain privileges or accommodations, such as meals, staterooms, berths, or the use of limited trains, is prohibited. If such form is desired it must be issued either in regular pass form or as a subdivision of one of the general classes as provided for in paragraph 2 (*b*).

Record of free tickets issued.

41. A complete record of all tickets issued in lieu of passes, including tickets for which the fares have been refunded as well as those issued free, must be maintained by carriers and filed in the office of the officer authorizing such issuance or refund. This record must show the date; form and number of ticket; stations from and to; name and address or other designation of person to whom issued; account of issuance (in accordance with par. 17); amount of fare; and name of officer authorizing the issuance of free ticket or refund of fare paid. (See Form 13.)

Free transportation without passes.

42. At the option of carriers, the following designated persons may be given passage, meals and sleeping, parlor, or other accommodations without passes, when in the actual performance of their duties:

Crews of trains, cars, and vessels.
Sleeping car, parlor car, and dining car employees.
Express messengers.
Baggage agents.
Newsboys on trains.

43. In cases of wrecks, epidemics, or other calamitous visitations, persons not prohibited by law from receiving free transportation may be accorded such transportation without passes. In such cases a general statement of the facts must be made by conductors or pursers and filed with reports of passes honored.

44. Passes need not be issued to a carrier's own employees for necessary travel in the performance of their duties in the transportation, maintenance, or construction work of the carrier requiring the movement of employees between points on its line of road, or for travel to and from such duties: provided that in lieu of passes such employees be supplied with checks, uniforms, badges, or other evidence which will establish their identity as bona fide employees entitled to receive passes; and provided further that instructions to recognize the particular means of identification which the carrier adopts be issued to conductors and ticket collectors and included in the carrier's general rules and instructions governing the issuance and use of passes referred to in paragraph 85.

45. Carriers are not required to issue passes for the free transportation wholly within any one municipality of their employees and others not prohibited by law from receiving free transportation; provided that persons so transported are distinguishable by badges, cap emblems, or uniforms indicative of their service.

United States Post Office Department commissions.

46. Commissions issued by the United States Post Office Department may be accepted for the passage of officers and employees of that department when traveling on official business. (See par. 74.)

Transportation of caretakers.

47. Pass forms must not be used for the transportation of caretakers of property. The transportation of caretakers is regarded as revenue transportation, the cost of which is included in the rates covering the charges on shipments for which caretakers are allowed.

48. Caretakers in actual charge of shipments of live stock, poultry, milk, or fruit, and traveling on trains or vessels with such shipments, shall be furnished with no other evidences of their rights to transportation than are contained in shipping contracts, or in identification papers to be used in connection with notations on waybills. If caretakers are permitted under the provisions of tariffs to travel on passenger trains immediately preceding or following shipments, they must be furnished with a form of caretaker's ticket, which must give full waybilling reference and conform to published tariff provisions.

49. If a caretaker's return passage is furnished under the terms of the shipping contract, it shall be provided for either by having the shipping contract executed at destination for return, or by having it lifted and a caretaker's return ticket issued, which must conform to published tariff provisions and show (*a*) the waybill or the shipping contract reference or (*b*) the initials and numbers of the cars, or the name of vessel, the shipping point, and the destination named in the contract.

50. In case shipments of milk are handled on tickets instead of waybills, caretakers' tickets must give full references to dates and numbers of the trains, or names of vessels, on which the shipments move.

51. All collected caretakers' tickets, shipping contracts, and identification papers on which caretakers are carried must be checked against the waybills or waybill records and filed in such manner as to be accessible and convenient for examination.

Extension of time limit of passes.

52. The time limit of a pass may be extended by an indorsement thereon, provided that appropriate record is maintained showing the final limit of passes so indorsed.

53. The time limit of outstanding annual or term passes may be extended, without indorsement, by the issuance of a general notice to that effect. If this is done, a copy of the notice shall be filed with the Commission and a copy shall be filed in the office in which are kept the records of the issuance of passes so extended and shall become a part of the records of passes issued.

Records of passes issued.

54. A complete record of each pass issued must be kept by carriers subject to these regulations. This record must supply information as indicated by the headings on the forms hereinafter prescribed

appropriate for the class of pass to be recorded, and such information must correspond with that appearing on the pass and request. In space provided for "Accommodations, etc.," on the record of annual and term passes issued must be shown all accommodations and services included on pass other than passage, such as drawing room, stateroom, berth, or meals. If passes, prepared for passage only, are indorsed as permitted in paragraph 2 (*c*) to include accommodations in addition to passage, similar indorsement must be made in the record of passes issued; if made on annual or term passes, it must appear in space for "Accommodations, etc.," on Form 10 or 11; if on trip passes, it must also appear on the stub or carbon copy of pass so indorsed.

55. Annual and term passes issued must be recorded on sheets or cards prepared similar to Forms 10 or 11.

56. If Form 10 is adopted, the passes must be entered either in numerical order or in alphabetical order according to the surnames of the persons to whom the passes are issued. When passes are entered in numerical order, an alphabetical index by names shall be maintained; when entered in alphabetical order, a numerical index showing name shall be maintained.

57. If Form 11 is adopted, the cards must be filed either in numerical order or in alphabetical order according to the surnames of the persons to whom the passes are issued. When cards are filed in numerical order, an alphabetical index by names shall be maintained; when filed in alphabetical order, a numerical index showing name shall be maintained. In lieu of the index required in this paragraph, if desired, records on this form may be made in duplicate with one set of cards filed in numerical order and the other set filed in alphabetical order according to the surnames of the persons to whom the passes are issued.

58. The numerical records or indexes referred to in paragraphs 56 and 57 must be kept separately by forms and series of passes; the alphabetical records or indexes may be kept either by forms and series of passes or in one complete alphabetical list for the entire issue.

59. Carriers may, if it is desired, keep an additional record of passes issued entered by departments, carriers, or otherwise, on Forms 10 or 11, but such additional record shall not substitute the complete alphabetical or numerical record or index required in paragraphs 56 and 57.

60. When the numbers of passes issued are shown in strict numerical order on requests received for annual and term passes, such requests may constitute the numerical index required in paragraphs 56 and 57, provided that any numerical index so maintained shall

be complete and shall contain not more than one series of numbers nor more than one form of pass.

61. The record of trip passes issued shall be kept on the stubs or carbon copies of trip passes. Full information must be shown on the stub or carbon copy of each trip pass, as provided on Forms 4, 5, and 6, and this information must conform to the data on the pass and coupon.

62. The record of commuter passes shall be kept on Form 10 or Form 11, if issued in card or book form, or on the stubs, if issued in coupon form with stub. These records must be maintained in the same manner as is provided for annual, term, or trip passes.

63. The record of telegraph passes issued on telegraph blanks shall be kept on Form 12. Such passes may be entered (*a*) in chronological order, (*b*) in alphabetical order according to surnames of persons to whom passes were issued, or (*c*) under departments, carriers, etc.

64. The record of telegraph passes issued on printed forms similar to trip passes shall be kept either on Form 12 or upon the stubs, if issued with stubs. In either event the full information required on Form 12 shall be shown.

65. If a pass is canceled, returned, or lost, the fact must be stated on the record, with the date of cancellation, return, or loss entered.

66. The records of passes issued must be filed in such manner as to be accessible and convenient for examination.

Records of requests on other carriers for passes.

67. Requests on other carriers for passes must be made in duplicate, or legible impression copies must be taken of them, and the duplicates or impression copies must be retained by the requesting carrier and filed in such manner as to be accessible and convenient for examination. When a pass is received, its number must be noted on the duplicate or impression copy of the request.

68. Notices received from other carriers advising of the issuance of passes under the provisions of paragraph 24 shall be filed in the office in which are filed copies of requests on other carriers for passes.

Joint passes.

69. A pass issued jointly by two or more carriers must show, in space provided for "Name of carrier," the names of each of the carriers concerned in such pass, and must also bear the autograph or facsimile signature of an officer named in the list referred to in clause (*a*) in paragraph 3, of each of the carriers interested. If all the signatures of such officers are facsimile signatures, the pass must be countersigned with ink by an officer or responsible subordinate of one of the carriers interested, who must be designated on the face of the pass.

70. If arrangements are made to accept or honor passes issued by other carriers over certain portions of a carrier's lines, such arrangements must be embodied in the pass rules and regulations referred to in paragraph 85, or a statement of the arrangements must be filed with the Commission.

Filing passes.

71. All passes collected and passes spoiled or returned must be filed in such manner as to be readily accessible and convenient for examination.

Reports of passes honored.

72. Reports, showing the use of passes, shall be made in accordance with the provisions of paragraphs 75 to 84, inclusive.

73. Travel performed on transportation certificates or similar authorities issued in accordance with the laws of a State which require designated officers to be accorded free transportation while on journeys entirely within the limits of such State, must be reported in the same manner as travel performed on annual or term passes.

74. Travel performed on commissions issued by the United States Post Office Department must be shown on conductor's or purser's report of passes honored, except when the holder is actually engaged in handling mail on the train or vessel.

Reports of passes honored—Carriers by rail.

75. Conductors or ticket collectors of carriers by rail must make reports of annual and term passes honored for each run on blank similar to Form 18 hereinafter prescribed, or on identification slips, as provided in paragraph 77. If desired, such reports may be combined with reports of revenue passengers, provided the required information is shown. It is optional with carriers by rail whether or not this report shall cover (*a*) passes issued to the employees of the reporting carrier and members of their families, (*b*) passes honored in suburban territory, and (*c*) passes honored for transportation wholly within any one city, town, or municipality. By the term "employees," as here used, is meant the officers and employees devoting substantially all their time to the work or business of the carrier and regularly carried on its pay rolls. By "suburban territory," as here used, is meant the territory adjacent to large centers to and from which there is a regular commuter travel.

76. Trip passes collected on rail lines, except as covered in clause (*a*), (*b*), or (*c*) of paragraph 75, shall in all cases be indorsed or punched so as to indicate the dates and numbers of trains on which used, and in addition thereto:

(*a*) If a trip pass, except as covered in clause (*a*), (*b*), or (*c*) of paragraph 75, is honored for passage between stations other than those named on its face and is collected, the conductor or ticket collector

shall indicate upon it by punch or indorsement the stations between which it actually is used.

(*b*) If a trip pass, except as covered in clause (*a*), (*b*), or (*c*) of paragraph 75, is honored for passage between stations other than those named on its face and is not collected, the conductor or ticket collector shall report the use of the pass on conductor's report, Form 18, or on identification slip, and in the same manner as provided for annual and term passes.

77. The use of identification slips and the form of such slips, if used, are left to the option of carriers by rail. If identification slips are used, and if they show the same information as required by conductor's report, Form 18, they may be substituted in lieu of the conductor's report.

78. Station numbers or letters instead of names may be used on conductors' reports and for indorsements on trip passes provided an official list of the symbols used is kept available for examination.

Reports of passes honored—Carriers by water.

79. Pursers or stewards of carriers by water must make reports of all passes honored and not collected for each trip on blank similar either to Form 20 or 21 hereinafter prescribed. If desired, Form 20 may be combined with the landing or identification check (as used in the collection of transportation at the time passengers disembark) and Form 21 may be combined with the reports of revenue passengers, provided the information required on Forms 20 and 21 is shown. It is optional with carriers by water whether or not these reports shall cover trip passes honored and collected.

80. A trip pass honored and collected, when not included in purser's report of passes honored, must be indorsed or punched by the ticket collector so as to indicate the date and name of vessel on which used, and the points between which used if other than those named on pass, and further, in the event that the pass includes sleeping or other accommodations, the stateroom or other accommodations furnished on the pass shall also be indicated by number or letter.

81. Where locked boxes are used in which ticket collectors deposit all collections as passengers disembark, reports of or indorsements on trip passes, as to date and name of vessel on which used, shall be made by either the ticket collector or by the employee whose duty it is to open and report the contents of such boxes.

82. It is optional with carriers by water whether or not reports shall be made covering passes honored over ferry lines when operated between points of close proximity.

Reports of passes honored—Sleeping and parlor car accommodations.

83. Conductors or ticket collectors of sleeping and parlor cars must make reports for each run of passes on which accommodations have been furnished, on blanks similar to Form 19 hereinafter prescribed or on reports prepared in columnar form, similar to Form 18, with headings to provide for the information required. If desired, Form 19 may be combined with reports of revenue passengers, provided the information required on Form 19 is shown. It is optional with carriers whether or not these reports shall cover trip passes honored and collected.

84. Trip passes collected and not included in conductors' reports of passes honored, must be indorsed or punched by the conductors or ticket collectors so as to indicate the dates on which used, the points between which used if other than those named on pass, the accommodations furnished thereon, the names or numbers of cars, and the route.

Carriers' pass rules.

85. Carriers must file with the Commission on or before January 1, 1917, copies of all their general rules and instructions then in effect governing the issuance and use of passes, if such have not been filed, and forward promptly copies of any subsequent rules and instructions. It is not intended, however, that carriers shall cause to be printed such rules or instructions for the specific purpose of filing them with the Commission.

Pass and record forms.

86. Passes must be issued and records kept substantially in accordance with the forms hereinafter prescribed. Except as provided for elsewhere in these regulations the forms indicate the nature of the information required and the order in which it shall appear. If, however, there is insufficient space on the face of any pass to show all the information required, reference may be made to the back of pass, where it shall be shown.

87. The dimensions of the forms contained in these regulations are not prescribed; however, in order to facilitate the filing of records it is recommended that Forms 16, 17, and 23 be prepared on paper 8 by 10½ inches.

88. Carriers may include any additional matter in the pass forms or record forms, but such additional matter must not be permitted to impair the information required in the prescribed forms or to affect the order in which it is given. The matter printed in italic type in the prescribed forms is not intended to be a part of the form but merely to indicate the nature of the information required.

89. Carriers may adopt additional record forms, but must file with the Commission a list of such forms, showing their use and their purpose, as provided in the Order on page 6.

90. For a special or unusual occasion—such as a convention of an association of railway employees, to attend which its members would use the lines of two or more carriers—when compliance with the foregoing regulations would be needlessly burdensome to the carriers concerned, consideration will be given by the Commission to an application from the initial carrier, made after an agreement with the other carrier or carriers over whose lines it is proposed to issue free transportation, for authority to issue a special form of pass, bearing coupons for the several carriers over whose lines the pass is to be effective.

Form 1.

ANNUAL OR TERM PASS.

FOR PASSAGE ONLY.

1917. (*Name of carrier.*) No. .....

Pass[1].....

Account[2].....

.....

Between[3].....

Until[4]..... 19.... {Unless otherwise ordered and subject to conditions on back.

Valid when countersigned by.....

.....
(*Name and official title.*)

Countersigned by

.....

Form 2.

ANNUAL OR TERM PASS.

FOR ACCOMMODATIONS, MEALS, ETC., BUT NOT INCLUDING PASSAGE.

1917. (*Name of carrier.*) No. .....

This pass entitles[1].....

Account[2].....

.....

To occupy[5].....

Between[3].....

Until[4]..... 19.... {Unless otherwise ordered and subject to conditions on back.

Valid when countersigned by.....

.....
(*Name and official title.*)

Countersigned by

.....

See notes relating to Forms 1 and 2 on page 26.

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.
[5] See paragraph 18.

Form 3.

ANNUAL OR TERM PASS.

FOR PASSAGE, INCLUDING MEALS, BERTHS, OR OTHER ACCOMMODATIONS.

1917 (*Name of carrier.*) No. .....

Pass[1] .....

Account[2] .....

.....

Between[3] .....

Including[3] .....

Until[4] ..... 19.... {Unless otherwise ordered and subject to conditions on back.

Valid when countersigned by .....

.....
(*Name and official title.*)

Countersigned by

.....

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.
[5] See paragraph 18.

NOTES RELATING TO FORMS 1, 2, AND 3.

For annual or term passes to be issued for travel over the entire line or certain portions thereof, the word "between" may be omitted, and in the space provided may be printed "Over entire system," "Over all lines," "Over Eastern Division," etc.

If annual or term passes are to be issued over the autograph signature of an officer, the provision for countersignature may be omitted from such passes.

NOTE RELATING TO FORM 2:

Passes to include meals or accommodations, other than passage, in addition to sleeping or parlor accommodations may be printed "To" instead of "To occupy," so that a pass as issued may read, "To meals and stateroom."

NOTE RELATING TO FORM 3:

Passes may be printed to read "Including meals and berth" or to indicate such other accommodations as are to be included with passage.

Form 4.

TRIP PASS.

FOR PASSAGE ONLY.

(*Name of carrier.*)	(*Name of carrier.*)	(*Name of carrier.*)
No.	No.	No. .....
TRIP PASS STUB.	TRIP PASS.	TRIP PASS.
....., 19..	Pass[1].....	(Subject to conditions on back.)
Pass[1].....	Account[2].....	....., 19..
Account[2].....	.....	Pass[1].....
.....	From[3].....	Account[2].....
From[3].....	To[3].....	.....
To[3].....	Void if detached.	From[3]..... to[3].....
And return.	Issued by.....	Good for one trip only until[4]...
Address.....		....., 19..
Expires[4].....		Valid when countersigned by
Requested by.....		.....
Issued by.....		.....
		(*Facsimile signature.*)
		.....
		(*Official title.*)
		Countersigned by
		.....

See notes relating to this form on page 29.

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.

Form 9.

TRIP PASS.

FOR ACCOMMODATIONS, MEALS, ETC., BUT NOT INCLUDING PASSAGE.

(Name of carrier.)	*(Name of carrier.)*	*(Name of carrier.)*
No.	No.	No. .....
TRIP PASS STUB	TRIP PASS	TRIP PASS
..... 19..	This pass entitles[1]	(Subject to conditions on back)
Pass entitling[1]	Account[2]	..... 19..
Account[2]	.....	This pass entitles[1] .....
.....	To occupy[3]	Account[2] .....
To occupy[3]	From[3]	.....
From[3]	To[3]	To occupy[3] .....
To[3]	Void if detached	From[3] ..... to[3] .....
And return	Issued by	Expires[4] ..... 19..
Address		Valid when countersigned by
Expires[4]		.....
Requested by		.....
.....		*(Facsimile signature.)*
Issued by		.....
.....		*(Official title.)*
.....		Countersigned by
.....		.....
.....		.....

See notes relating to this form on page 29.

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.
[5] See paragraph 18.

Form 6.

TRIP PASS.

FOR PASSAGE, INCLUDING MEALS, BERTHS, OR OTHER ACCOMMODATIONS.

(Name of carrier.)	*(Name of carrier.)*	*(Name of carrier.)*
No.	No.	No. .....
TRIP PASS STUB.	TRIP PASS.	TRIP PASS.
....., 19..	Pass [1]	(Subject to conditions on back.)
Pass [1]	Account [2]	....., 19..
Account [2]	.....	Pass [1] .....
.....	From [3]	Account [2] .....
From [3]	To [3]	.....
To [3]	Including [5]	From [3] .....to [3] .....
And return.	Void if detached.	Including [5] .....
Including [5]	Issued by	Good for one trip only until [4]
Address		....., 19..
Expires [4]		Valid when countersigned by
Requested by		.....
Issued by		..... *(Facsimile signature.)*
		..... *(Official title.)*
		Countersigned by
		.....

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.
[5] See paragraph 18.

NOTES RELATING TO FORMS 4, 5, AND 6:

Trip passes may be provided with a second sheet for carbon copies in lieu of the pass stub. In such cases the carbon copies must be numbered to correspond with the passes, and must show the full information required on the stub.

The trip pass may so be prepared as to permit, by using carbon paper, the filling in of all information required on the stub, the going portion, and the return portion of the pass, by one writing. One coupon of such passes may read "To ..... from ....." instead of "From ..... to ....." as shown on forms 4, 5, and 6.

Trip passes may, if preferred, be limited by a system of dates along the margin, the limits to be indicated by punching or by tearing off dates later than that on which the pass expires.

NOTE RELATING TO FORM 5:

Passes to include meals or accommodations, other than passage, in addition to sleeping or parlor accommodations may be printed "To" instead of "To occupy," so that the pass as issued may read "To meals and stateroom."

NOTE RELATING TO FORM 6:

Passes may be printed to read "Including meals and berth" or to indicate such other accommodations as are to be included with passage.

Form 7.

COMMUTER PASS.

(*Name of carrier.*) No. .....

[1] ..... TRIP PASS.

Pass [2] .....

Account [3] .....

.....

Between [4] .....

Until [5] ....., 19... {Unless otherwise ordered and subject to conditions on back.

Valid when countersigned by .....

.....
(*Name and official title.*)

Countersigned by

.....

[1] See paragraph 2 (*a*) Commuter passes.
[2] See paragraphs 14, 15, and 16.
[3] See paragraph 17.
[4] See paragraph 19.
[5] See paragraph 20.

NOTES RELATING TO FORM 7.

Commuter passes may be issued either in coupon form, with a separate coupon for each ride, or in card form with numbers on the margin, one of which is to be punched for each ride. The card pass, or the last coupon or cover of book (if issued in coupon form), must contain the information indicated on this form.

Electric railways may provide coupons on this form, each of which represents an equivalent in free transportation of a specified amount of fare.

Form 8.

TELEGRAPH PASS.

(See paragraphs 34 to 38, inclusive.)

.....

.....

This telegram, when written in ink and countersigned by you, will pass [1].....

.....from [2]..... to [2].....

account [3].....if used within [4].....days.

.....

(*Name of issuing officer.*)

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 19.
[3] See paragraph 17.
[4] See paragraph 20.

Form 9.

RECORD OF PASS STOCK RECEIVED AND DISTRIBUTED.

(See paragraph 12.)

DEBIT. Form..... CREDIT.

Stock received.				Stock distributed.					
Date.	Consecutive numbers.		Number.	Date.	Furnished to—		Consecutive numbers.		Number.
	Commencing.	Closing.			Name.	Title.	Commencing.	Closing.	

Form 10.

RECORD OF ANNUAL AND TERM PASSES ISSUED—BOOK RECORD.

(See paragraphs 54 to 66, inclusive.)

Form.....									
Date issued.	No.	To whom issued.			Accommodations, etc.	Territory.	Date of expiration.	Request of—	Remarks.
		Name.	Address.	Account.					

NOTE RELATING TO FORM 10:

Carriers issuing passes for passage only are not required to provide the space for "Accommodations, etc.," on Form 10.

Form 11.

RECORD OF ANNUAL AND TERM PASSES ISSUED—CARD RECORD.

(See paragraphs 54 to 66, inclusive.)

..... Form..... No.....

Name.....

Address.....

Account.....

Accommodations, etc.....

Territory.....

Date of expiration.....

Request of.....

Date issued.....

Remarks.....

NOTES RELATING TO FORM 11:

Carriers issuing passes for passage only are not required to provide the space for "Accommodations, etc.," on Form 11.

In order to facilitate the preparation of such passes and records as are prepared on paper thin enough to secure two legible carbon copies, the records and indexes of passes issued may be made in that manner. In such cases and by preparing record forms sufficiently longer than the pass forms, the information not required on the pass form may be shown at the right of the information which is required, viz: "Address" on the line with "Name"; "Request of" on the line with "Account"; "Date issued" on the line with "Territory"; and "Remarks" on the line with "Date of expiration."

Form 12.

RECORD OF TELEGRAPH PASSES ISSUED.

(See paragraphs **54 to 66**, inclusive.)

Date issued.	To whom issued.			From—	To—	Issued by—	Remarks.
	Name.	Address.	Account.				

Form 13.

RECORD OF FREE TICKETS ISSUED.

(See paragraph 41.)

Ticket.			Station from—	Station to—	To whom issued.	Address.	Account.	Amount of fare.	Authorized by—	Remarks, file no., etc.
Date.	Form.	No.								

Form 14.

REQUEST FROM CARRIER'S OFFICERS AND EMPLOYEES FOR PASSES.

PASSAGE ONLY.

(See paragraphs 21 and 22.)

.....Company,

OFFICE OF.....,

....., 191..

.....

.....

.....

DEAR SIR: Please furnish pass for.....

.....

Address.....

Account of.....

From.....

To.....,and return.

Limited to.....

([1]).....
(Signature.)

.....
(Title or occupation.)

Approved.

.....

Pass No.[2]..... issued.

[1] See paragraph 27. [2] See paragraph 26.

NOTE RELATING TO FORM 14:
This form may be extended so as to cover two or more passes.

Form 15.

REQUEST FROM CARRIER'S OFFICERS AND EMPLOYEES FOR PASSES.

PASSAGE AND ACCOMMODATIONS, OR ACCOMMODATIONS ONLY.

(See paragraphs 21 and 22.)

.....Company.

OFFICE OF .....

....., 191..

.....

.....

.....

DEAR SIR: Please furnish pass for .....

.....

Address.....

Account of.....

To occupy.....

From.....

To.....and return.

Including.....

Limited to.....

(1).....
(Signature.)

.....
(Title or occupation.)

Approved.

.....

Pass No.[2].....issued.

[1] See paragraph 27. [2] See paragraph 26.

NOTES RELATING TO FORM 15:

This form may be extended so as to cover two or more passes.

Requests for passes for passage and accommodations need not be provided with the space "To occupy" on Form 15. (See par. 18b.)

Requests for passes for accommodations only need not be provided with the space "Including" on Form 15. (See par. 18a.)

Form 16.

REQUEST ON ANOTHER CARRIER FOR TRIP PASSES.

(See paragraphs 21, 22, 67, and 87.)

.....Company.

OFFICE OF.....,

....., 191..

.....

.....

.....

DEAR SIR: Will you kindly favor me, on account of this company, with trip pass..for the following person.., who.....not prohibited by law from receiving free transportation: [1].....

.....

Name.....

Address.....

Account of.....

From.....to.....and return.

Limited to.....

This request shall be valid only when countersigned by myself or by.....

My name is on file with the Interstate Commerce Commission.

([2]) .....
(Facsimile signature of officer.)

.....
(Title.)

Countersigned by:

.....

Pass No.[3].....issued.

[1] On requests drawn on other carriers for accommodations, but not including passage, in this space must be shown the character of accommodations requested; as, "to occupy one berth." On requests for passes to include both passage and accommodations, in this space must be shown the character of accommodations and a statement that passage also is desired; as, "to occupy one stateroom in addition to passage."

[2] See paragraph 28.

[3] See paragraphs 26 and 67.

NOTES RELATING TO FORM 16:

The provision for countersignature on Form 16 is not required when such forms are to bear autograph signature.

This form may be extended so as to cover two or more passes.

Form 17.

REQUEST ON ANOTHER CARRIER FOR ANNUAL OR TERM PASSES.

(See paragraphs 21, 22, 67, and 87.)

.....Company,

OFFICE OF.....,

....., 191..

.....

.....

.....

DEAR SIR: Will you kindly favor me, on account of this company, with..... (*Annual or term.*) pass....for..... (*Period or year.*) over your line for the following person.., who..... not prohibited by law from receiving free transportation: [1].....

.....

Number of pass issued.[2]	Name.	Title or occupation.	Address.	Territory.	Remarks, etc.[3]

This request shall be valid only when countersigned by myself or by.....

My name is on file with the Interstate Commerce Commission.

([4]) ..... (*Facsimile signature of officer.*)

..... (*Title.*)

Countersigned by:

.....

[1] On requests drawn on other carriers for accommodations, but not including passage, reference must be made in this space to the character of accommodations requested; as, "to occupy space as indicated below." On requests for passes to include both passage and accommodations in this space reference must be made to the character of the accommodations requested and a statement that passage also is desired; as, "to occupy space as indicated below in addition to passage."

[2] See paragraphs 26 and 67.

[3] In column headed "Remarks, etc.," shall be shown the character of any accommodations requested other than passage.

[4] See paragraph 28.

NOTE RELATING TO FORM 17:

The provision for countersignature on Form 17 is not required when such forms are to bear autograph signature.

Form 18.

CONDUCTOR'S REPORT OF PASSES HONORED.

STEAM ROADS AND ELECTRIC RAILWAYS.

(See paragraphs 75 to 78, inclusive.)

(*Name of carrier.*)

Train No..... Date.....

Train run, from.....to.....

..... (*Conductor or other employee.*) Punch. ☐

Form or kind of pass.	Pass No.	In favor of—	Honored on this train.		No. persons.	Remarks: Stop-offs, etc.
			From—	To—		

Form 19.

CONDUCTOR'S REPORT OF PASSES HONORED.

SLEEPING AND PARLOR CAR ACCOMMODATIONS.

(See paragraphs 83 and 84.)

(*Name of carrier.*)

Form or kind of pass..... No.....

Car..... Line.....

Accommodations [1].....

From.....

To.....

Date.....

In favor of.....

..... (*Conductor or other employee.*)

[1] The drawing-room, section, berth, etc., furnished on pass shall be indicated by number or letter.

Form 20.

PURSER'S REPORT OF PASSES HONORED.

CARRIERS BY WATER.

(See paragraphs 79 to 82, inclusive.)

(*Name of carrier.*)

Date [1] .....

Name of vessel [1] .....

Sailing, from [2] ..... to [2] .....

Pass honored on this trip } from ..... to .....

Form or kind of pass .....

Pass number .....

In favor of .....

Number of persons .....

Accommodations, etc.[3] .....

Remarks .....

.....
(*Purser or other employee.*)

[1] Date and name of vessel may be shown on back if dating stamp is used showing such information.

[2] Termini of run may be printed or stamped and the form prepared so as to read, "Between ..... and .....," providing direction of trip is shown, as northbound, eastbound, etc.

[3] Any accommodations included on pass, other than passage, must here be shown. The berths, staterooms, etc., furnished shall be indicated by number or letter.

Form 21.

PURSER'S REPORT OF PASSES HONORED.

CARRIERS BY WATER.

(See paragraphs 79 to 82, inclusive.)

(*Name of carrier.*)

Date.....

Name of vessel.....

Sailing from.....to.....

.....

(*Purser or other employee.*)

Accommodations, etc.	In favor of—	Form or kind of pass.	Pass No.	Honored on this trip.		Number of persons.	Remarks.
				From—	To—		
(1)							
(2)							

[1] The stateroom or berth number may be printed on the form and the required information entered opposite such number.

[2] Any accommodations included on pass, other than passage, must here be shown. The staterooms, berths, etc., furnished shall be indicated by number or letter.

Form 22.

ACKNOWLEDGMENT OF PASSES ISSUED WITHOUT WRITTEN REQUEST.

(See paragraph 24.)

Date.....

... .

.....

.....

Receipt is hereby acknowledged of

....
(*Name of carrier.*) (*Annual or term.*)

Pass No....., in favor of the following person.., who.....not prohibited by law from receiving free transportation:

Name.....

Address.....

Account of.....

Territory.....

Limited to.....

.....

NOTES RELATING TO FORM 22:

This form may be extended so as to cover two or more passes.

Forms 22 and 23 may be prepared so that the two forms and the necessary carbons may be made at one writing.

Form 23.

NOTIFICATION OF PASSES ISSUED WITHOUT WRITTEN REQUEST.

(See paragraphs 24, 25, and 87.)

Date.....

.....

.....

.....

Notice is hereby given of the issuance of

....
(*Name of carrier.*) (*Annual or term.*)

Pass No. ....., in favor of the following person.., who ..... furnished such transportation without written request from your company:

Name.....

Address.....

Account of.....

Territory.....

Limited to.....

.....
(*Name of officer issuing pass.*)

NOTES RELATING TO FORM 23:

This form may be extended so as to cover two or more passes.

Forms 22 and 23 may be prepared so that the two forms and the necessary carbons may be made at one writing.

[fol. 91] IN UNITED STATES DISTRICT COURT.

ORDER—RE SUBMISSION FOR FINAL DETERMINATION—December 20, 1929

Came the United States of America, by Elmer B. Collins, its counsel, and tendered its Answer herein, which is ordered to be filed.

Then came counsel for the plaintiff and tendered two copies of notice to the Interstate Commerce Commission and the Attorney General of the United States to the effect that at 10:30 o'clock upon th morning of December 20, 1929, at the United States Court room, Louisville, Kentucky, an application would be made to the District Court of the United States for an interluctory injunction herein. One of said notices is accepted by Elmer B. Collins, Special Assistant to the Attorney General; the other by Daniel W. Knowlton, Chief Counsel for the Interstate Commerce Commission. Both of said notices are ordered to be filed.

Then both sides announced ready for trial. The case was stated by counsel for the respective parties and certain documents filed as evidence with Clarence E. Walker, Official Stenographer. The hearing having been concluded, it is ordered that this case be submitted for final determination.

The plaintiffs are given one week from and after this date to file brief and furnish counsel for defendants a copy thereof; and the defendants are given one week after receipt of such copy to file their brief herein.

[fol. 92] IN UNITED STATES DISTRICT COURT

ANSWER OF UNITED STATES—Filed Dec. 20, 1929

United States, one of the above-named defendants, for answer to the petition filed herein against it says:

I.

United States admits the allegations made and contained in the opening paragraph and paragraphs numbered 1 to 5, inclusive, of the petition, with this exception:

(a) It has not sufficient knowledge or information to form a belief concerning the truth of the allegation made in the opening paragraph, that petitioners sue on behalf "of all other carriers subject to the Interstate Commerce Act which may have an interest in the premises," and, therefore, United States neither admits nor denies that allegation.

II

United States, for answer to the first paragraph of subdivision numbered 6 of the petition, admits that the allegation therein is substantially correct; but respectfully refers to the language of paragraph (7) of Section 1, and of Section 22, of the Interstate Commerce Act for the full and complete provisions thereof.

[fol. 93] Answering the second paragraph of said subdivision, United States denies the truth of the allegation therein contained insofar as it alleges that petitioners have exchanged free tickets and passes calling for similar, or an equivalent amount of free transportation.

III

United States denies the allegations made and contained in subdivisions numbered 7, 8 and 9 of the petition, except this: It admits the allegation in subdivision 7, that it is the right of the carrier issuing a free pass, free ticket or other evidence of free transportation, to transport free over its line persons lawfully holding such free pass, free ticket, or other evidence of free transportation.

IV

United States, for its answer to subdivision numbered 10 of the petition, says:

The allegation therein, that the practice of moving persons entitled to use, and using, free transportation in the private or business car of another carrier free and without imposing any charge for the movement of the car, has always been well known to the Commission, is incompetent, irrelevant, and immaterial, and, United States, therefore, neither admits nor denies said allegation; but, United States denies that the Commission has ever either impliedly or expressly recognized such practice as lawful.

United States admits that the portions of paragraph (6) of Section 1 and of paragraph (1) of Section 6 of the Interstate Commerce Act, set forth in that subdivision, are cor-
[fol. 94] rect copies in part of the provisions of said paragraphs; and, further, admits and alleges that at the time of its decision involved herein, tariffs filed with the Commission failed in most cases to cover definitely and clearly the transportation by carriers, subject to the Interstate Commerce Act, of the private or business cars of other carriers subject to the Act, in passenger service; and denies the allegation that no tariff covering such transportation "has ever been filed with the Commission, as the Commission has well known."

United States says that the allegation that "no requirement was ever made by the Commission, up to the time of its order in this proceeding, that any such tariff should be filed" is incompetent, irrelevant, and immaterial, and, therefore, it neither admits nor denies that allegation.

United States admits that the Commission's Conference Rulings, before they were rescinded, as hereinafter mentioned, prescribed the form of pass set forth in said subdivision; but denies that said subdivision contains an accurate and complete statement in respect of the form of pass prescribed by the Commission's Regulations to Govern the Form and Recording of Passes, Issue of 1917.

United States denies that the Commission's Conference Rulings and Regulations to Govern the Form and Recording of Passes, either by prescribing a form of pass or in any other way, recognized the lawfulness of the practice of moving persons entitled to use, and using, free transportation in the private or business car of another carrier free and without imposing any charge for the movement of the car; and, further, denies that Congress, in reenacting paragraph (7) of Section 1 and Section 22 of the Interstate Commerce Act, either ratified or adopted an interpretation of those provisions of law which would permit of, and recognize as lawful, said practice.

[fol. 95] United States admits that said Conference Rulings were rescinded by the Commission's order of December 26, 1928; and that said Regulations to Govern the Form and Recording of Passes were amended by the Commission's order of July 30, 1929.

For further answer to said subdivision 10, United States denies that said order of July 30, 1929, is an order within the meaning of paragraph (8) of Section 16 of the Interstate Commerce Act; and alleges that the provisions of said paragraph (8) of Section 16 are applicable only to orders made under Sections 3, 13 or 15 of said Act; and that said order of July 30, 1929, was not made under any of those sections, but was made under Section 20 of said Act in that it was an amendment to the Commission's Regulations to Govern the Form and Recording of Passes which had been prescribed in accordance with said Section 20.

V

United States admits the allegations made in subdivision numbered 11 of the petition.

VI

United States denies the allegations made and contained in subdivision 12 of the petition.

Wherefore, having fully answered the petition, United States prays that the relief therein prayed be denied and the petition dismissed with costs to the petitioners, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

John Lord O'Brian, Assistant to the Attorney General; Elmer B. Collins, Special Assistant to the Attorney General; Thos. J. Sparks, United States Attorney.

[fol. 96] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 97] In United States District Court

Order Filing Oral Stipulation—Jan. 9, 1930

Came Clarence E. Walker, shorthand reporter, and tendered a stipulation orally stated by Daniel W. Knowlton, attorney for the Interstate Commerce Commission, at the hearing on December 20, 1929, and then agreed to by

counsel representing all parties, which stipulation is ordered to be filed and made part of the record.

Chas. H. Moorman, Circuit Judge; Smith Hickenlooper, Circuit Judge; Chas. I. Dawson, District Judge.

[fol. 98] In United States District Court

Stipulation Orally Stated by Mr. Knowlton on the Hearing of this Case December 20th, 1929 and Agreed to by all the Counsel in the Case—Filed Jan. 9, 1930

The Commission's denial on page 5 of its answer of petitioners' allegation that no tariff of the character described in the petition has ever been filed with the Commission as the Commission has well known, was merely for the purpose of making its answer conform to the Commissioner's report herein involved. On pages 787 to 788 of its report the Commission discusses what is shown generally by the tariffs on file with it relating to charges on private cars, including provisions with respect to special, privately-owned cars is not defined in the tariffs, but its obvious meaning is cars owned by others than the carriers." But it farther states that the provisions so described "are the provisions generally in effect, although there may be variations on individual lines." Except for such possible variations on *on* individual lines, it is stipulated that the tariffs now and at the time of its report on file with the Commission do not and did not name charges for the movement by one carrier subject to the Interstate Commerce Act of the private or business passenger cars of another such carrier when occupied by a person entitled to use, and using free transportation.

It is, of course, not intended to admit hereby that if a carrier-owned car is chartered to some other person and company and is being moved as a chartered car, it is taken out of the tariff relating to it, if it happens in addition to be carrying a person entitled to use and using free transportation.

[fol. 99] Reporter's Certificate to foregoing paper omitted in printing.

[fol. 100] IN UNITED STATES DISTRICT COURT

ORDER FILING CERTAIN DOCUMENTS—January 9, 1930

Came petitioners, by E. S. Jouett, counsel, and tendered the following documents, which are ordered to be filed and made part of the record herein, to-wit:

(1) Conference Ruling No. 95.

(2) Pages 6796-97 of Senate Document No. 466, 63rd Congress, Second Session; from the Senate Print of the Commissioner's Record in the Five Percent case.

(3) The Report of the Commission in the Tap Line Case.

(4) The Report of the Commission in the Colorado Free Pass Investigation.

(5) The Report of the Commission in the Five Percent Case.

Chas. H. Moorman, Circuit Judge; Smith Hickenlooper, Circuit Judge; Chas. I. Dawson, District Judge.

[fol. 101] IN UNITED STATES DISTRICT COURT

ORDER SETTING ASIDE ORDER OF SUBMISSION, ETC.—January 31, 1930

Came the petitioners by counsel and moved the Court to set aside the order of submission heretofore entered and to grant them leave to file herein a certified copy of the record before the Interstate Commerce Commission in their Docket No. 17757 entitled "In the Matter of the Use of Private Passenger Train Cars" involved in this suit.

It appearing to the satisfaction of the Court that the defendants waived notice of the hearing of this motion, and the Court being advised thereon, it is ordered that the order of submission herein be and it is set aside and that the petitioners be and they are granted leave to file the Interstate Commerce Commission record above mentioned.

And it further appearing that a copy of this record has been ordered but that it is voluminous and it is not known just when it will be ready, it is ordered that same be filed not later than five days after it is certified by the Secretary

of the Interstate Commerce Commission and delivered to counsel for petitioners.

It appearing to the Court that none of the parties to this cause desire opportunity for further hearing, it is now ordered that upon the filing of the above mentioned record this case stand resubmitted to the Court for decision.

Chas. H. Moorman, Circuit Judge; Smith Hickenlooper, Circuit Judge; Chas. I. Dawson, District Judge.

[fol. 102] In United States District Court

Opinion—Filed May 28, 1930

Before Moorman and Hickenlooper, Circuit Judges, and Dawson, District Judge

Per curiam: In this action the plaintiffs seek to enjoin the enforcement of an order of the Interstate Commerce Commisison, made and entered on the 4th day of November, 1929, requiring the plaintiffs and all other carriers subject to the Commission's jurisdiction to cease and desist from transporting private passenger train cars, including so-called office cars, of other carriers, free, or at other than published tariff rates, and to enjoin and set aside a regula-[fol. 103] tion of the Commission, made and entered on the 30th day of July, 1929, prohibiting the issual of car passes, except for cars owned by the issuing carrier, or held by it under lease for use in its business as a common carrier, and except for cars of lines operated as a part of the system of the issuing carrier. The validity of the regulation complained of is dependent upon whether or not the Commission had the authority to issue the order of November 4, 1929, referred to.

The order of November 4, 1929, was issued as the result of a proceeding in the so-called Private Passenger Car case, No. 17757, instituted on the Commission's own motion, as authorized by Section 13 (2) of the Interstate Commerce Act. A questionnaire was sent to all Class I and Class II carriers and to switching and terminal carriers, calling for information relative to the movement, handling and use of private passenger train cars, owned, leased or operated on

home and foreign lines. Sworn returns were filed by three hundred and eighty-seven carriers of the United States, covering the calendar years 1923, 1924 and 1925. A proposed report was served upon the plaintiffs and upon all other carriers affected, and, within the time allowed, exceptions were filed by the Association of Railway Executives, on behalf of its membership, based upon substantially the same contentions as are advanced by the plaintiffs in this proceeding. After a full hearing, the Commission issued its report on June 21, 1929. Its findings and conclusions are summarized in the syllabus of the report as follows:

"1. The transportation or movement of private passenger cars, including so-called office cars, by one carrier for [fol. 104] another or its officials, free or at other than published tariff rates is contrary to the provisions of the interstate commerce act.

2. It is unjustly discriminatory and unduly preferential and prejudical to haul such private cars of other carriers free, or at less than published tariff rates, while charging certain minimum fares and revenue for the movement of privately owned or chartered cars.

3. The transportation of persons in private passenger cars, including berth and other accommodations, at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory and unduly preferential and prejudicial."

The exceptants to the report having waived any further hearing, the Commission, on the 4th day of November, 1929, entered the order complained of. The order recites as its basis the findings and conclusions set out in the Commission's report.

The plaintiffs are not complaining of the third finding summarized in the syllabus of the report, and repeated in the order, but profess their willingness to correct the practice therein condemned in a manner satisfactory to the Commission. Their objections are addressed to the findings summarized in the first and second headings of the syllabus, and to the order of the Commission commanding a cessation of the practices therein condemned as illegal. There has been filed as a part of the record in this case the entire

record considered by the Interstate Commerce Commission, and the case is before us on final submission.

There is no disagreement as to the facts. The sole question is whether or not the Interstate Commerce Commission, under the law, has the authority to deal with the matters attempted to be dealt with in the order complained of.

[fol. 105] The applicable law is found in Section 1(7), Section 22(1), Section 6(1)(7), Section 2 and Section 3(1) of the Interstate Commerce Act, as amended by the Transportation Act of 1920. The pertinent parts of Section 1(7) and Section 22(1) are as follows:

Section 1(7). "No common carrier subject to the provisions of this chapter, shall, directly or indirectly, issue or give any interstate free ticket, free pass or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians and attorneys at law; * * * Provided, that this provision shall not be construed to prohibit the interchange of passes for the officers, agents and employees of common carriers and their families; * * *"

Section 22(1). "Nothing in this chapter shall prevent the carriage, storage or handling of property free, or at reduced rates, for the United States, State or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, * * * Nothing in this chapter shall be construed to prevent railroads from giving free carriage to their own officers and employees or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; * * *"

Section 6(1) requires every common carrier subject to the provisions of the Act to file with the Interstate Commerce Commission, and to print and keep open to public inspection, its schedule of fares and rates for the transportation of passengers and property, and Section 6 (7) prohibits any common carrier subject to the provisions of the Act from engaging or participating in the transportation of passengers or property, unless the fares, rates and charges upon which the same are transported by such car-

rier have been filed and published as provided in Section 6(1), and further prohibits any departure from the published schedules.

[fol. 106] Section 2 and Section 3(1) of the Act are as follows:

Section 2. "If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this chapter, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

Section 3(1). "It shall be unlawful for any common carrier subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

As shown by its report, the Commission proceeded upon the theory that a private passenger train car or office car of one carrier, when hauled over the line of another carrier, and occupied by an officer or employee of the owning road holding a pass issued by the moving carrier, moves as an article of commerce, and not as a transportation facility of the moving carrier, and that therefore it can not be moved by such non-owning carrier over its line, except in strict compliance with Section 6(1)(7) of the Interstate Commerce Act, hereinbefore referred to. Having reached

the conclusion that the movement of such car on the line [fol. 107] of a non-owning carrier is the transportation for another of an article of commerce by such carrier, rather than the use by the moving carrier of a transportation facility, the Commission found that its free transportation by such non-moving carrier constitutes an unjust discrimination, denounced in Section 2 of the Act, and the giving of an undue and unreasonable preference and advantage, prohibited by Section 3 of the Act.

Starting with the premise that a common carrier has the right, under Section 1(7) and Section 22(1) of the Interstate Commerce Act, to exchange passes with other common carriers for their officers, employees and their families, and the further premise that the Interstate Commerce Commission has no authority under the law to control the method or plan by which a carrier acquires its facilities of transportation, the plaintiffs argue that when a common carrier exercises its legal right to issue a pass to an officer or employee of another common carrier, or to members of their families, in exchange for a like courtesy, it has the right to transport such pass holder in whatever appropriate vehicle it may see fit to use; that it may haul such pass holder in one of its own cars, in a leased car, or in a car owned by the carrier of which the pass holder is an officer or employee, and lent to the moving carrier for the purpose of transporting the pass holder; that from whatever source the car may be obtained it is a transportation facility of the moving carrier and not an article of commerce for the movement of which it must charge the owning carrier the published tariff rate.

The plaintiffs further contend that the provisions of the Interstate Commerce Act, requiring the filing and publication of tariff schedules, and adherence thereto, and the provisions of Sections 2 and 3 of the Act, against unjust dis- [fol. 108] crimination and undue or unreasonable preferences, have no application to persons or property which the law permits to be moved free or at reduced rates.

It is further argued that the alleged long-continued sanction by the Interstate Commerce Commission of the practice condemned in the order complained of constitutes a binding interpretation of the Act as permitting the practice now condemned, and that Congress, in re-enacting the

Act's provisions with reference to passes and reduced rates, has impliedly adopted such interpretation.

The Commission being a creature of statute, of course has only such powers as are delegated to it by statute and such powers as are impliedly within its delegated powers. It is thoroughly settled that the Commission has no power to control the judgment of the carrier in the method it adopts to supply itself with the necessary equipment to perform its duties as a common carrier of passengers. It is free to own, lease or borrow its equipment. Chicago, St. Louis & New Orleans R. R. Co. v. Pullman Southern Car Co., 139 U. S. 79; Scofield v. Lake Shore & Michigan Southern Ry. Co., 2 I. C. C. 118; Worchester Excursion Car Co. v. Pennsylvania R. R. Co., 3 I. C. C. 584. Therefore, when a carrier issues its pass to an officer or employee of another carrier, it has the right to perform its contract of carriage of the pass holder in equipment of its own in leased or in borrowed equipment. The right to thus acquire its equipment, however, does not imply the right to so use such equipment as to give the pass holder passenger an undue preference or advantage over paying passengers.

It was the purpose of Congress, in enacting the Inter- [fol. 109] state Commerce Act, to strike down all forms of unjust discrimination, favoritism and inequality on the part of common carriers in the performance of their duties as such. No common carrier subject to the provisions of the Act has a right to give, and no person has a right to accept from such carrier, any undue preference or advantage. Any act or practice which may be reasonably construed as an unjust discrimination or as an undue preference or advantage, is undoubtedly a matter within the the jurisdiction and subject to the control of the Commission, unless authority for such act or practice can be found in the Act itself. New York, New Haven & Hartford R. R. Co. v. Interstate Commerce Commisison, 200 U. S. 361; L. & N. R. R. Co. v. Mottley, 219 U. S. 467. In determining if a particular act or practice is excepted from the provisions of the Act, the Act should not be liberally or loosely construed, for the purpose of enlarging the meaning of the exceptions therein contained, but, in view of the cardinal purpose of the Act to prohibit unjust discriminations and unreasonable preferences, all exceptions should be strictly

construed, and the words of the exceptions should be given their usual and ordinary meaning.

But for the exceptions found in Section 1(7) and Section 22(1), a common carrier subject to the provisions of the Act would have no right to give a pass to any person, and the giving of such a pass would undoubtedly be a violation of Sections 2 and 3 of the Act. The exceptions found in Sections 1(7) and 22(1) are simply a statutory declaration that the giving of passes to the classes therein named shall not be considered as an unjust discrimination under Section 2, nor as an undue or unreasonable preference under Section 3. However, when Congress authorized the carriers affected by the Act to give free tickets or passes to [fol. 110] their own officers and employees and their families, and to exchange with other such carriers passes for their officers and employees, we must assume that Congress used the words "free ticket", "free pass" and "pass" in the sense that those words are commonly and ordinarily understood. A pass or a free ticket, as ordinarily understood, connotes free transportation in the ordinary way and with the usual conveniences afforded the paying public. To construe the permission to grant free passes and free tickets, contained in Section 1(7) and Section 22(1), as authorizing not only free transportation of the holder, but transportation in a private car with all the conveniences thereof, would amount to a distortion of the language used and a perversion of the central purpose of the Act. A fair interpretation of the two sections referred to, when they are read in connection with the other provisions of the Act, is that they authorize the giving of free transportation to the persons therein named, with jurisdiction in the Commission to determine if the method of transporting the pass holder, and the conveniences afforded him, constitute an unjust discrimination, prohibited by Section 2, or the giving of an undue or unreasonable preference, within the meaning of Section 3 of the Act.

Construing the Act in this way, it seems to us wholly immaterial whether we view the private or office car, occupied by a pass holder who is an officer or employee of the owning road, as an article of commerce when moving over the line of a non-owning carrier, or as a transportation facility of the moving carrier. If it is an article of commerce, it is being transported free for the benefit of the pass holder; if it is a

transportation facility of the moving carrier, it is being furnished free to the pass holder. In either event he enjoys [fol. 111] the service thus afforded as a privilege granted by his pass, and the service and the facilities thus afforded him so far exceed those furnished ordinary paying passengers as to bring the practice clearly within the jurisdiction of the Interstate Commerce Commission.

We are not impressed with the argument of the plaintiff that inasmuch as there can be no discrimination or preference under the Act except between persons or articles of the same class, preferential treatment of the pass holder can not constitute a violation of the Act. Pass holders and paying passengers are of the same general class—they are all passengers. It costs no more to transport one than the other. The pass holder is lifted out of the provisions of the Act only to the extent that he does not have to pay the usual and ordinary transportation charges exacted of other passengers. In every other respect he is on the same footing as other passengers, and if the facilities afforded him are found by the Commission, upon substantial evidence, to amount to an unjust discrimination or an undue or unreasonable preference, the Commission has the power under the Act to deal with the matter without interference from the courts.

The plaintiffs suggest that such a construction of the Act would prohibit common carriers from furnishing their officers and employees and the officers and employees of exchanging roads with passes carrying ordinary Pullman accommodations, which practice has always had the sanction of the Commission. It must be remembered, however, that the Act does not denounce every preference or discrimination. What is prohibited is unjust discrimination and unreasonable and undue preferences. We can very well understand how the Commission may consider that the granting of Pullman privileges to a pass holder is not an [fol. 112] unjust discrimination against paying passengers nor an unreasonable preference in favor of the pass holder, and yet hold that to furnish the pass holder with a private car is an unjust disrimination and an undue preference.

Being of the opinion that the Act is clear and unambiguous, the plea of contemporaneous construction and the adoption of that construction by Congress, of course must be rejected. United States v. Missouri Pacific R. R. Co., 278 U. S. 269.

For the reasons stated, we conclude that the practice condemned by the Commission is a matter within its jurisdiction, and, being supported by substantial evidence, we are without power to interfere. Chicago, R. I. & P. Ry. Co., v. United States, 274 U. S. 29; Virginian Ry. Co. v. United States, 278 U. S. 658.

We are not to be understood by what has been here said as holding that the Act confers upon the Commission the power to prohibit a common carrier from hauling its own officers and employees free over its own lines in a private car when they are engaged in the duties of their employment.

A decree conforming to the views herein expressed may be prepared and presented for entry.

Chas. H. Moorman, Smith Hickenlooper, Chas. I. Dawson.

[fol. 113] IN UNITED STATES DISTRICT COURT

DECREE—June 13, 1930

This cause having been submitted for final decree upon the pleadings, evidence and exhibits, and the court, after argument of counsel, having fully considered same, for the reasons stated in the written opinion filed herein on May 28, 1930, is of opinion that the plaintiffs are not entitled to the relief sought, and it is therefore considered, ordered and decreed that plaintiffs take nothing by their petition and that same be dismissed, and that the defendants recover of the plaintiffs their costs herein expended; to all of which the plaintiffs except.

Chas. H. Moorman, Smith Hickenlooper, Cir. Judge; Chas. I. Dawson, Dist. Judge.

[fol. 114] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed July 12, 1930

To the United States of America, Interstate Commerce Commission and Hon. J. W. Cammack, Attorney General of the State of Kentucky:

You, and each of you, are hereby notified that the Louisville & Nashville Railroad Company, Illinois Central Rail-

road Company, The Baltimore & Ohio Railroad Company, The Chesapeake & Ohio Railway Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company, who sue, etc., Petitioners and Appellants in the above entitled cause, do hereby, on this 12th day of July, 1930, appeal to the Supreme Court of the United States from the decree signed, filed and entered in the above entitled cause on the 13th day of June, 1930, being that certain suit entitled No. 571, wherein petitioners above named are Petitioners and Appellants, and the United States of America and Interstate Commerce Commission are Defendants and Appellees.

The Attorney General of the State of Kentucky is included in this notice pursuant to provision of the District Court Jurisdiction Act of October 22, 1913.

Louisville & Nashville Railroad Company, Illinois Central Railroad Company, The Baltimore & Ohio Railroad Company, The Chesapeake & Ohio Railway Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company, by Edward S. Jouett, R. V. Fletcher, John J. Cornwell, Robert B. Tunstall, H. N. Quigley, Alfred P. Thom, Jr., Alfred P. Thom, Solicitors for said Petitioners and Appellants.

Service of this notice is acknowledged this July 21st, 1930.

United States of America, by Elmer B. Collins (R), Special Assistant to the Attorney General; Interstate Commerce Commission, by Daniel W. Knowlton, Its Solicitor.

Dated July 12, 1930.

[fol. 115] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed July 12, 1930

To the United States of America, Interstate Commerce Commission, and Hon. J. W. Cammack, Attorney General of the State of Kentucky:

You, and each of you, are hereby notified that the Louisville & Nashville Railroad Company, Illinois Central Rail-

road Company, The Baltimore & Ohio Railroad Company, The Chesapeake & Ohio Railway Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company, who sue, etc., Petitioners and Appellants in the above entitled cause, do hereby, on this 12th day of July, 1930, appeal to the Supreme Court of the United States from the decree signed, filed and entered in the above entitled cause on the 13th day of June, 1930, being that certain suit entitled No. 571, wherein petitioners above named are Petitioners and Appellants, and the United States of America and Interstate Commerce Commission are Defendants and Appellees.

The Attorney General of the State of Kentucky is included in this notice pursuant to provision of the District Court Jurisdiction Act of October 22, 1913.

Louisville & Nashville Railroad Company, Illinois Central Railroad Company, The Baltimore & Ohio Railroad Company, The Chesapeake & Ohio Railway Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company, by Edward S. Jouett, R. V. Fletcher, John J. Cornwell, Robert B. Tunstall, H. N. Quigley, Alfred P. Thom, Jr., Alfred P. Thom, Solicitors for said Petitioners and Appellants.

Service of this notice is acknowledged this July 26, 1930.

J. W. Cammack, Attorney General of Kentucky, by M. B. Holefield, Asst. Atty. General.

Dated July 12, 1930.

[fol. 116] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed July 12, 1930

The above named petitioners, and each of them, being aggrieved by the final order or decree of the above entitled Court heretofore made and entered on the 13th day of June, 1930, do hereby appeal from said decree to the Supreme Court of the United States of America, for the reasons specified in the assignment of errors filed herewith; and they pray that their appeal may be allowed, and that cita-

tion be issued as provided by law and that a transcript of the records, proceedings and documents upon which such decree was based, duly authenticated, be transferred to the Supreme Court of the United States under the rules of said Court in such case made and provided.

Your petitioners further pray that proper order be made relating to the security to be required of them.

Louisville & Nashville Railroad Company, Illinois Central Railroad Company, The Baltimore & Ohio Railroad Company, The Chesapeake & Ohio Railway Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, by Edward S. Jouett, R. V. Fletcher, John J. Cornwell, Robert B. Tunstall, H. N. Quigley, Alfred P. Thom, Jr., Alfred P. Thom, Solicitors for said Petitioners and Appellants.

[fol. 117] In United States District Court

Assignment of Errors—Filed July 12, 1930

Come now the petitioners above named and present, with their petition for appeal herein, this assignment of errors and say that in the record and proceedings in the above entitled cause and the decree made and entered against them therein on the 13th day of June, 1930, there is error in the particulars hereinafter set forth, that is to say:

The District Court for the Western District of Kentucky erred in making the decree and in dismissing the petition herein in the following respects:

I

It erred in finding that the Commission had held in its report in this case that there was unjust discrimination or undue or reasonable preference as between the holder of a pass and a passenger paying for his ticket, and in further holding that this finding was supported by substantial evidence before the Commission, whereas the Commission made no such finding and there is no evidence whatever in the record to support it.

II

It erred in holding that a passenger using and lawfully entitled to use free transportation is, in law, in the same class as a passenger paying for his transportation, since the Interstate Commerce Act on its face clearly shows they do not belong to the same class and permits them to be treated and carried differently and places no limitati-n on the manner or means by which they may respectively be carried, beyond providing that pay passengers must be carried in [fol. 118] accordance with published tariffs. The Court accordingly erred in disregarding or misconstruing these provisions of the Act.

III

It erred in its interpretation of the law by holding that it was unlawful for a carrier subject to the Interstate Commerce Act to carry persons lawfully entitled to hold and holding free transportation in any vehicle selected by the carrier and used for the purpose, and by holding that the only method in which it was lawful for such a carrier to carry persons lawfully entitled to use and using free transportation was in the ordinary way and with the usual conveniences afforded the paying public.

IV

It erred in that it failed to hold, as it should have done, that the transportation or movement of a private railroad passenger car (commonly known, and hereinafter spoken of, as a railroad office car) of one carrier subject to the Interstate Commerce Act by another such carrier free, when occupied by a person using and lawfully entitled to use free transportation, is not contrary to the provisions of the Interstate Commerce Act.

V

It erred in failing to hold, as it should have done, that it is lawful and is not contrary to sections 6 or 22 of the Interstate Commerce Act, which relate to the shipment of property, for one railroad company subject to the Interstate Commerce Act to transport or move a railroad office car for another such railroad company free or at other than pub-

lished tariff rates when the car is occupied by a person or [fol. 119] persons using and lawfully entitled to use free transportation.

VI

It erred in failing to hold, as it should have done, that it is not unjustly discriminatory or unduly preferential or prejudicial for one carrier subject to the Interstate Commerce Act to haul the railroad office car of another such carrier free, or at less than published rates, when occupied by persons using and lawfully entitled to use free transportation, while charging certain minimum fares and revenues for the movement of privately owned or chartered cars.

VII

It erred in failing to hold, as it should have done, that in the transportation or movement of a railroad office car of one carrier subject to the Interstate Commerce Act by another such carrier, when such car is occupied and is used as a means of transporting persons using and lawfully entitled to use free transportation, the carrying line is using such car as its own facility of furnishing transportation which it may legitimately move without charge.

VIII

It erred in holding that the Commission had lawful authority to make and issue its regulations of July 30, 1929, and its order of November 4, 1929, in so far as said order prohibited the movement free and without charge by one carrier subject to the Interstate Commerce Act of the office car of another such carrier when occupied by persons using and lawfully entitled to use free transportation.

[fol. 120] IX

The Court erred in failing to set aside and enjoin, as it should have done, said regulation of July 30, 1929, and the order of the Commission of November 4, 1929, in so far as said order declared illegal, and directed the carriers to cease and desist from, the movement of the office cars of other carriers subject to the Act free when such cars were occupied by, and used as the means of furnishing transportation to, persons using and lawfully entitled to use free transportation.

Wherefore the petitioners above named, appellants, pray that the said decree entered herein on the 13th day of June, 1930, be reversed and that the said District Court of the United States for the Western District of Kentucky be ordered to enter a decree, with direction that the said petition of the petitioners be granted and that said order of the Interstate Commerce Commission, in so far as it is complained of in said petition, be declared void and perpetually set aside, suspended and annulled and that your petitioners, appellants, may have such other and further relief as may be appropriate.

Louisville & Nashville Railroad Company, Illinois Central Railroad Company, The Baltimore & Ohio Railroad Company, The Chesapeake & Ohio Railway Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company; by Edward S. Jouett, R. V. Fletcher, John J. Cornwell, Robert B. Tunstall, H. N. Quigley, Alfred P. Thom, Jr., Alfred P. Thom, Solicitors for said Petitioners and Appellants.

[fol. 121] EXHIBIT

Conference Ruling 95, from Conference Rulings Bulletin No. 7 of the Interstate Commerce Commission, Issued August 1, 1917, by Order of the Commission; Introduced in Evidence in This Case

[fol. 122] 95. Notice as to the issuance of passes.—It appearing that the ruling issued by the Commission on the 9th day of June, A. D. 1908, relative to the issuance and use of passes, should be modified in certain respects relating to the forms of passes to persons eligible to receive free transportation under the act to regulate commerce, it is ordered that said ruling shall be amended to read as follows:

(a) Many abuses in the issuance and uses of passes have been discovered by the Commission which it is desired to correct, and to this end, and because of the misinterpretation of the law by carriers generally, the Commission at this time makes announcement that it will recommend the in-

dictment and prosecution of all carriers and persons issuing passes to or allowing the use of passes by, any persons not included within the designated classes to whom free transportation may be given by carriers subject to the act to regulate commerce as set forth in said act. Among those not included under the provisions referred to are the following:

1. Officers or employees of news companies other than newsboys. (See Transportation of Newspaper Employees, 12 I. C. C., 15.)

2. Officers or employees of telegraph or telephone companies, excepting when personally engaged in operation, extension, repair, or inspection of lines upon or along the railroad right of way and used in connection with the operation of the railroad. (The amendatory act of June 18, 1910, brings telephone and telegraph companies within the jurisdiction of the Commission; see ruling 305; see also rulings 161 and 219.)

3. Officers or employees of surety, transfer, and baggage companies, except baggage agents. (See ruling 216, also U. S. v. Erie R. R., 236 U. S. 259.)

4. Officers or employees of carriers not subject to the act to regulate commerce, including officers and agents of steamship and stage lines not subject thereto. (See ruling 196; also 95c and 475.)

5. Officers or employees of subsidiary corporations engaged in business other than transportation subject to the act to regulate commerce, save that such officers and employees may be granted free transportation when attending to business imposed upon a carrier subject to the act. (See rulings 169, 208, and 263.)

6. Families of local attorneys, surgeons, and others who are not regularly employed by carriers. (See ruling 208a.)

(b) Each pass issued must bear upon its face the name of some person belonging to a class named in section 1 of the act as eligible to receive free transportation. In addition to such person so named a pass may also carry not to exceed a specified number of unnamed persons of any

[fol. 123] class eligible to receive free transportation; the number and the class to which such person belongs being specified upon the face of the pass—that is to say, passes in the following forms will be recognized by the Commission as legal:

"Pass John Smith, President, car, and five officers and employees of the X. Y. & Z. Railway."

"Pass J. R. Barner and six linemen, foreman, and force of the Western Union Telegraph Company. Good only when traveling in connection with the construction, maintenance, or operation of the lines of the Western Union Telegraph Company on the right of way of this A. B. C. Railway Company."

"Pass one extra messenger of the Southern Express Company when presented with letter signed by Superintendent, Assistant Superintendent, or Route Agent of said Express Company, authorizing use and giving name of person to be passed."

"Pass John Smith, section foreman, and six employees of X. Y. & Z. Railway."

(c) The Commission holds that the word "family," as used in section 1 of the act to regulate commerce, includes those who are members of, and who habitually reside in, the household of the person eligible to receive family passes, including household servants when traveling with the family or with any member thereof, and relatives who are in fact dependent upon such persons, although not actually residing in his household. (See rulings 92, 174, and 417.) The Commission will, therefore, view passes in the following form as lawful:

"Pass John Smith, wife, two sons, three daughters, and two servants."

"Pass Mrs. John Smith and daughter, account John Smith, Agent X. Y. & Z. Railroad Company at Washington, D. C."

(d) The name of the person presenting the pass must appear upon it. Passes intended to be used in the absence of the head of the family whose occupation makes the issuance of passes lawful must, in addition to the name of

said head, show the name of the person using the same. (See ruling 290.) For instance, a pass to be used by John Smith, his wife, or his daughter, separately, should read:

"Pass John Smith, Mrs. John Smith, and Miss Mary Smith, account C. & O. Agent at Richmond, Va."

(e) Every pass to an officer or employee of a carrier other than the one issuing the pass, shall indicate the name and rank of the person to, or on behalf of whom, such pass is issued, as well as the name of the carrier employing him.

(f) The Commission construes the act, so far as it relates to railway-mail service employees, as giving such employees the right to receive free transportation when on duty in their cars, or when traveling under orders from a superior [fol. 124] officer. The Commission does not now undertake to say how far this portion of the act to regulate commerce is modified or controlled as regards railway-mail service employees by other statutes or by contracts between carriers and the Post Office Department. (See ruling 377.)

(g) The Commission will recognize any rail or water carrier filing a tariff, joint or local, with the Commission, as a carrier subject to the act so far as the issuance of passes to its officers and employees may be concerned. Where a carrier has no tariffs on file with the Commission, and does not acknowledge itself subject to the Commission's jurisdiction, the Commission will regard the issuance of passes to its officers or employees as unlawful, without, however, thereby passing upon the question of the jurisdiction of the act over such carrier in so far as it may be necessary to assert such jurisdiction. In this regard reference is made to Cosmopolitan Shipping Co. v. Hamburg American Packet Co., 13 I. C. C., 266, and In re Petition Frank Parmelee Co., 12 I. C. C., 39. By reference to these decisions it will be seen that among the carriers not subject to the act are ocean carriers to nonadjacent foreign countries and domestic carriers by wagon, stage, or automobile. Carriers covered by these decisions are not eligible to file tariffs or receive passes. (See rulings 196, 216, 263, 355, and 475.)

(h) The Commission reaffirms Rule 63 of Tariff Circular 15-A, now reported as ruling 208 of this Bulletin.

(i) The Commission can not undertake, in any case, to determine whether or not individuals are within any of the classes mentioned in section 1 of the act as eligible to receive free transportation.

(j) The Commission will not regard as unlawful allowance of use, or the use of passes merely irregular in form, under this ruling, during the present calendar year. Passes, however, issued to persons not eligible to receive the same must be called in at once, as well as passes so loosely framed that persons not eligible to receive free transportation may be carried upon them—that is to say, a pass to "John Smith, family, and household servants," although irregular in form, will not be regarded by the Commission as unlawful prior to January 1, 1909. A pass, however, to "John Smith, car, and party," being susceptible of use for the transportation of persons not within the act, should be immediately corrected.

(k) Carriers are enjoined against the destruction of records or memoranda touching the issuance of passes, and the passes themselves, coming into the hands of the carriers after use, must, until further orders of the Commission, be retained for a period of not less than five years. (See Commission's Regulations to Govern Destruction of Records of Steam Roads Effective July 1, 1914, and Regulations to Govern Forms and Recording Passes, Effective Jan. 1, 1917.) October 12, 1908.

[fol. 125] IN UNITED STATES DISTRICT COURT

Statement of the Evidence, Condensed as Required by Equity Rule 75, Presented to the District Court in This Case.—Filed July 12, 1930

On the trial of this case in the District Court the following evidence was introduced.

1. The Commission's Conference Ruling No. 95, which is as follows: See Page 113

[fols. 126-129] 2. The Pass Regulations of the Commission issued in 1917 and in force at the time of the report of the Commission in this case, a copy of which is filed as an exhibit to the answer of the Commission herein and is to be copied in the record.

3. The report of the Commission in the Tap Line Case, 23 I. C. C., 277-298.

4. The report of the Commission in the Colorado Free Pass Investigation, 26 I. C. C. 491-494.

5. The report of the Commission in the Five Per cent Case, 31 I. C. C. 351-410.

6. Pages 6796 and 6797 of Senate Document No. 466, 63d Congress, 2d Session, taken from the Senate print of the Commission's record in the Five Per Cent Case, which pages are as follows:

[fol. 130]

EXHIBIT

Pages 6796 and 6797 of Senate Document No. 466, 63d Congress, 2d Session; Part of Record, in Five Per Cent Case, 31 I. C. C. 410; Introduced in Evidence in This Case

[fol. 130a] Summary of Carriers' Answers to Question No. 71 Contained in the Commission's Circular of Inquiry Dated December 20, 1913

Question No. 71.—Give on Form No. 43, as required by headings and instructions thereon, information regarding service performed by the respondent in handling over its lines private cars for other than its own officials and employees during the year ended June 30, 1913.

Form No. 43.

Answer to Question No. 71.

[Name of respondent.]

Statement showing the private cars moved over the lines of the respondent during the year ended June 30, 1913, on passes or other free authority issued to other than respondent's officials and employees, the approximate expense of handling such cars, and the revenue that would have accrued to respondent if cars had been moved at tariff rates.

Date of movement	Car		Description of pass on which the car moved						Points between which moved		Approximate cost of handling	Revenues at tariff rate	Remarks
	Initials	Number	Kind of pass	Number	In favor of—	Address	Issued account of—		From—	To—			
							Official title	Name of carrier					
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
										Total			

Instructions.—The returns on this form should show all private cars handled free over the lines of the respondent, during the period named, for other than respondent's own officials and employees.

In columns (d) to (i), inclusive, should be given a description of the pass covering the movements of each car. Column (d) should show kind of pass, as "Annual," "Term," "Trip," or "Telegraph." If car moved under free authority other than a pass, these six columns should be left blank and a short description of such authority, to whom issued and reasons therefor, should be given in "Remarks" column.

In columns (j) and (k) should be given the names of the stations between which car was moved on respondent's lines.

Column (l) should show the approximate cost to the respondent of moving the car over its rails, and a brief statement, explanatory of the basis used in arriving at this cost should be made a part of the answer hereto.

Column (m) should show the revenue that would have accrued to respondent if car had been moved at tariff rates.

[fol. 130b] Statement showing the private cars moved over the lines of the respondent during the year ended June 30, 1913, on passes or other free authority issued to other than respondent's officials and employees, the approximate expense of handling such cars, and the revenue that would have accrued to respondent if cars had been moved at tariff rates.

Name of carrier	Car movements	Revenue at tariff rate	Remarks
Ann Arbor R. R. Co.	19	$1,724.50	
Atl. & St. Lawrence R. R. Co.	7	525.00	
Atlantic City R. R. Co.	6	102.50	
Baltimore & Ohio R. R. Co.	386	51,107.30	
Balt., Ches. & Atl. Ry. Co.	2	142.00	
Boston & Maine R. R.	365	19,440.50	
Buff. & Sus. Ry. Co.	4	144.00	
Buff., Roch. & Pitts. Ry. Co.	73	8,374.75	
Central New England Ry. Co.	20	446.50	Respondent reports 7 additional movements deadhead, without revenue.
Central R. R. Co. of New Jersey	420	7,478.60	Respondent reports 53 additional movements deadhead, without revenue.
Central Vermont Ry. Co.	82	4,175.75	
Chesapeake & Ohio Ry. Co. (includes also C. & O. Ry. Co. of Indiana)	216	37,162.20	Respondent reports 1 additional movement deadhead, without revenue.
Chicago & Alton R. R. Co.	109	11,217.24	
Chi. & East'n Ill. R. R. Co. (includes also E. & T. H. R. R. Co.)	122	11,501.38	
C., H. & D. Ry. Co.	26	2,069.50	
Chi., Ind'lis & Sou. R. R. Co.	8	371.00	
Chi., Ind. & Louisv. Ry. Co.	80	7,345.00	
C., C., C. & St. L. Ry. Co.	248	35,064.75	
Cumberland Valley R. R. Co.	103	3,685.40	
Dayton & Union R. R. Co.	1	5.64	
Delaware & Hudson Co.	90	7,446.00	Respondent reports 6 additional movements deadhead, without revenue.
Del., Lack. & W. R. R. Co.	54	1,032.84	
Detroit & Mackinac Ry. Co.	30	1,162.98	
Det., Tol. & Ironton Ry. Co.	4	8.40	
Erie R. R. Co. (includes also Chi. & Erie R. R. Co.)	156	27,130.10	
Grand Rapids & Ind. Ry. Co	72	7,264.75	
Grand Trunk Western Ry. Co.	58	8,373.75	
Hocking Valley Ry. Co.	30	1,598.75	
Kanawha & Michigan Ry. Co.	1	18.00	

Statement—Continued

Name of carrier	Car movements	Revenue of tariff rate	Remarks
L. E. & W. R. R. Co. (includes also F. W., Cin. & L. R. R. Co. and Nor. Ohio Ry. Co.)	4	130.00	
L. S. & M. S. Ry. Co.	331	45,542.20	
Lehigh & Hudson River Ry. Co.	17	670.14	
Lehigh & New Engl. R. R. Co.	3	118.00	
Lehigh Valley R. R. Co.	195	9,126.25	
Long Island R. R. Co.	10	283.50	
Maine Central R. R. Co.	50	1,006.00	
Michigan Central R. R. Co.	280	27,290.50	
N. Y. C. & H. R. R. Co. (includes also B. & A. R. R. Co.)	540	65,054.97	
N. Y., C. & St. L. R. R. Co.	13	1,500.00	
N. Y., N. H. & H. R. R. Co.	161	15,633.25	Respondent reports 34 additional movements deadhead, without revenue.
N. Y., Phil. & Nor. R. R. Co.	26	924.13	
N. Y., Sus. & W. R. R. Co.	2	47.80	
Norfolk & Western Ry. Co.	240	22,641.00	
Pennsylvania Co.	71	9,861.25	
Pennsylvania R. R. Co. (includes also Northern Central R. R. Co., New York Bay R. R. Co., Phil., Balto. & Wash. R. R. Co., Rosslyn Connecting R. R. Co., Union R. R. Co. of Balto., West Jersey & Seashore R. R. Co., Philadelphia & Beach Haven R. R. Co.)	1,059	96,128.03	
Peoria & Eastern Ry. Co.	11	623.75	
Pere Marquette R. R. Co.	108	4,610.25	
Philadelphia & Reading Ry. Co.	501	16,229.73	Respondent reports 73 additional movements deadhead, without revenue.
Pittsburg & Lake Erie R. R. Co.	60	2,929.50	
Pitts., C. C. & St. L. Ry. Co.	129	17,118.75	
Port Reading R. R. Co.	1	38.00	
Rutland R. R. Co.	38	2,386.50	
Toledo & Ohio Central Ry. Co.	59	2,031.25	
Ulster & Delaware R. R. Co.	12	345.36	
Vandalia R. R. Co.	100	9,193.50	
Wa. Pitts. Ter. Ry. Co. (includes also West Side Belt R. R. Co.)	18	653.00	
Wabash R. R. Co.	200	29,989.60	
Western Maryland Ry. Co.	50	2,938.50	
Total	7,081	644,250.79	

Note—The approximate cost of handling private cars, as called for in column (1) of Form No. 43, was given by but few carriers. Returns as a whole are so incomplete as to be of no value.

[fol. 131] 7. A duly certified copy of the entire record of the Interstate Commerce Commission in No. 17757—In the Matter of the Use of Private Passenger Train Cars—in which the order complained of in the petition was entered.

No evidence was given by witnesses, either orally or by deposition. The case was tried on the facts detailed in the report of the Interstate Commerce Commission (155 I. C. C. 775) as to what the practices of the carriers were. These facts, so detailed, the petitioners did not controvert, but they contended that, assuming them to be true, the Commission did not have lawful authority to enter so much of its order based thereon as prohibits one railroad company subject to the Interstate Commerce Act to move, without making a charge therefor, the private passenger or business car of another such railroad company when occupied by persons using and lawfully entitled to use free transportation.

The circumstances relating to the filing of the full duly certified copy of the record before the Commission were these: Subsequent to the oral argument and to the filing of briefs on both sides, the parties agreed to the reopening of the case for the purpose of allowing petitioners to file such duly certified copy of the entire record of the Interstate Commerce Commission in the above described proceedings, and this was accordingly done.

As appears from the correspondence, it was presented to the Court to meet a point made in one of the briefs for the defendants that, in the absence of such record, the Court shall make certain conclusive presumptions as to what it contained. The order of submission was accordingly set aside, said record was filed, the case was immediately resubmitted, the argument of the defendants' counsel based upon its absence was withdrawn, and the case was in due time decided.

From this record it appears that a questionnaire was sent by the Commission to all Class I and Class II carriers and switching and terminal carriers, calling for information as to private passenger trains owned, leased, or operated, the movement or use of such cars as were trans-[fol. 132] ported free or at less than tariff rates on home and foreign lines, and the occupants of such cars on the re-

spective trips. Returns or answers thereto were filed under oath by 387 carriers covering the calendar years 1923, 1924 and 1925.

The only evidence appearing in the record before the Commission was the returns or answers of the various carriers to this questionnaire. These answers covered many thousands of pages of statistical data, differing in details but being practically the same in substance. These returns or answers were correctly tabulated by the Commission, its tabulation being shown in Appendices A, B, C, D, E, F, G and H attached to the Commission's report in this case. The returns or answers sustained the statements of fact made and detailed in the Commission's report and in its appendices as to what the practice of the carriers were. An official pamphlet copy of this report and the appendices was made a part of the petition, marked "Exhibit B in full", and, inasmuch as it was not printed in full with the petition, a copy of it is hereto attached as a part hereof. The returns and answers further showed that the illustrations of the different phases of the practice of transporting private passenger cars, including so-called office cars, shown by the particular instances set forth in the text of the report and in Appendices C, D, E, F, G and H, were illustrative and typical of the practices of the carriers named in the Commission's order. The facts so stated and detailed in the Commission's report and its appendices (such particular instances being so regarded as illustrative and typical) constitute a full and complete statement, in simple and condensed form, of all evidence or facts which were contained in the record before the Commission on which it entered the order complained of in this case.

8. As appears from the order of the Commission herein, which is hereby made a part of this statement of evidence, [fol. 133] the defendant carriers waived any further or additional hearing before the Commission to that which had been given prior to said order.

9. No part of the evidence, except as above stated and herein condensed, contained in the record of the proceedings before the Interstate Commerce Commission, or of this case before the District Court, is pertinent, material or essential to the decision of any question presented on

this appeal, and accordingly, pursuant to the provisions of Equity Rule 75, all of it except what is herein contained is omitted.

Edward S. Jouett, R. V. Flecther, John J. Cornwell, Robert B. Tunstall, H. N. Quigley, Alfred P. Thom, Jr., Alfred P. Thom, Solicitors for Petitioners and Appellants.

Endorsement on back:

Notice of lodgment of the within Statement of Evidence in the Clerk's office of said Court is hereby acknowledged, this eighth day of July, 1930.

Elmer B. Collins, Special Assistant to the Attorney General; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission.

INTERSTATE COMMERCE COMMISSION

No. 17757

IN THE MATTER OF USE OF PRIVATE PASSENGER TRAIN CARS

Submitted March 14, 1929. Decided June 21, 1929

1. The transportation or movement of private passenger cars, including so-called office cars, by one carrier for another or its officials, free or at other than published tariff rates is contrary to the provisions of the interstate commerce act.
2. It is unjustly discriminatory and unduly preferential and prejudicial to haul such private cars of other carriers free, or at less than published tariff rates, while charging certain minimum fares and revenue for the movement of privately owned or chartered cars.
3. The transportation of persons in private passenger cars, including berth and other accommodations, at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory and unduly preferential and prejudicial.

Thomas P. Healy for Interstate Commerce Commission.

Alfred P. Thom, Alfred P. Thom, jr., and *R. H. Aishton* for Association of Railway Executives.

W. H. Lyford for Chicago & Eastern Illinois Railroad Company.

REPORT OF THE COMMISSION

McMANAMY, *Commissioner:*

Exceptions to the proposed report were filed on behalf of the Association of Railway Executives and the Chicago & Eastern Illinois Railroad Company and oral argument has been had.

This is an investigation instituted on our own motion into and concerning the use of private passenger-train cars, including so-called office cars, in the transportation of persons, with a view to making such order or orders in the premises as may be warranted.

A questionnaire was sent to all Class I and II carriers and to switching and terminal carriers, calling for information as to private passenger-train cars owned, leased, or operated, the movement or use of such cars as were transported free or at less than tariff rates on home and foreign lines, and the occupants of such cars on respective trips. Returns were filed, under oath, by 387 carriers, covering the calendar years 1923, 1924, and 1925.

The returns to the questionnaire were so voluminous and the subject matter so diversified that a complete detailed analysis thereof is

impracticable within the limits of this report. Different phases of the subject have been considered generally and particular practices and instances cited as illustrations.

The returns show that a substantial portion of the total mileage of private passenger-train cars, including so-called office cars, herein referred to collectively as private cars, was on the lines of carriers other than those owning the cars. The private cars thus moved over foreign lines were transported without charge. In other words, a pass was issued covering transportation of the private cars similar to that issued for the transportation of certain classes of persons as provided for in sections 1 and 22 of the act.

A general summary of the data included in the returns to the questionnaire is contained in Appendix A, which shows separately for Class I roads, Class II roads, and for switching and terminal roads the number of private passenger cars owned or leased, number of trips, number of occupants holding passes, and the number holding tickets. In Appendix B is contained a statement, by roads, of the mileage of private passenger cars during the years 1923, 1924, and 1925 on home and foreign lines, also of the mileage of foreign cars on home lines. The data submitted by carriers covering movement of foreign cars on home lines do not in some cases agree with the data submitted by the owning carrier covering mileage of cars on foreign lines. These discrepancies are, however, of little importance and no attempt was made toward correction thereof.

It will be understood that a private car includes a kitchen, dining room, staterooms, and observation or sitting room, together with storage space and sleeping quarters for the cook and attendants. The facilities thus provided for those traveling in private cars exceed the facilities of the ordinary coach or Pullman car.

The returns to the questionnaire show that the occupants of private cars are not restricted to officials and employees of the carriers but include in a large number of cases the families, relatives, and friends of railway officials traveling on passes or on tickets that would in most cases entitle them only to transportation in the ordinary coach. The following instances, which refer to movements of private cars of other carriers over the lines of the Atlantic Coast Line, Atchison, Topeka & Santa Fe,[1] New York Central, and Union Pacific, will illustrate the practices in these respects. The parties indicated were in charge of the cars.

[1] Hereinafter referred to as the Santa Fe.

	Miles
On the Atlantic Coast Line:	
1. Wife of director	664
2. Wife of director	1,327
3. Wife of chairman of board	3,000
4. Wife of vice president	54
5. Wife of president	108
6. Wife of senior vice president	340
7. Wife of vice president	651
8. Wife of vice president	389
9. Wife of vice president	108
10. Wife of chairman of board	274
11. Widow of deceased president	1,327
12. Daughter of chairman of board	631
13. Wife of general superintendent	155
14. Wife of vice president	464
On the Santa Fe:	
1. Wife of president	2,242
Car deadhead, Los Angeles, Calif., to Chicago, Ill.	2,227
2. Widow and son of deceased vice president	2,242
3. Widow of deceased director	1,129
4. Widow of deceased president	2,006
Car deadhead to Kansas City, Mo.	1,791
Car deadhead Chicago, Ill., to Los Angeles, Calif.	2,260
5. Widow of deceased president	2,260
6. Wife of president	2,242
Car deadhead, Los Angeles, Calif., to Chicago, Ill.	2,242
7. Wife of vice president	1,919
Car deadhead, Los Angeles, Calif., to Kansas City, Mo.	1,790
8. Widow of deceased director	1,708
9. Widow of deceased president	3,795
Car deadhead, Los Angeles, Calif., to Kansas City, Mo.	
10. Wife of chairman of board	2,225
On the New York Central:	
1. Wife of president	877
2. Wife of director	876
3. Widow of deceased director	438
4. Widow of deceased director (in privately owned car)	1,314
5. Wife of vice president	856
6. Wife of vice president	597
7. Wife of chairman of board	294
8. Wife of president	667
9. Wife of director	961
On the Union Pacific:	
1. Wife of director	1,350
2. Wife of president	2,522
3. Widow of deceased chairman of board (in privately owned car)	1,980
4. Wife of vice president	807
5. Widow of deceased vice president	2,434
6. Wife of executive vice president	1,980
7. Wife of chairman of board	990

On December 9, 1925, Chicago, Rock Island & Pacific car No. 1911 left Chicago, Ill., for Los Angeles, Calif., and return. This car was occupied by the general freight agent of the carrier and by the vice

president of the Studebaker Corporation and wife, together with four children and a maid. The mileage of this trip totaled 4,594 miles. On November 8, 1925, the same car traveled from Chicago to Champaign, Ill., over the Illinois Central and was occupied by the system freight-traffic manager of the carrier, who traveled on a pass, and by 15 other persons holding tickets. The returns to the questionnaire show that "most of these parties were engaged in the coal business."

On May 15, 1925, Pittsburgh & Lake Erie car No. 99 moved over the Louisville & Nashville from Louisville, Ky., to Cincinnati, Ohio. The car was in charge of the assistant to the president, and accompanying him were the following guests using tickets:

Vice president and wife, Standard Steel Spring Company.
President and wife, Schoonover Furnace Company.
Official and wife, Severance Manufacturing Company.

There is also a substantial use of private cars, both on home and foreign lines, by directors of carriers. For example, Appendix C shows movements of private cars occupied by directors of the Pennsylvania Railroad. Trips of less than 200 miles on foreign lines are not included nor are trips between Pennsylvania Railroad points such as Chicago and St. Louis, Mo., via the Chicago & Alton included.

Attention is called to the record of movements of private cars occupied by or assigned to a vice president of one of the eastern carriers, which is shown in Appendix D. The same official is an executive of several other carriers in different parts of the country.

During the three-year period the eight private cars of the New York, Chicago & St. Louis[1] traveled 254,814 miles on foreign lines, while foreign-line cars traveled only 26,693 miles on that line. An analysis of the movements of these eight cars on trips involving both home and foreign lines is contained in Appendix E. These trips included trips to Florida, California, Michigan, Maine, French Lick Springs, Ind., Hot Springs, Ark., and White Sulphur Springs, W. Va. Included among the occupants in numerous instances were the wives of officials and in other instances the parties included guests holding tickets.

The movement of private cars to resorts commonly patronized by those seeking recreation or amusement, and located on foreign lines, is very noticeable. For example, the total mileage of private cars of other carriers over the Atlantic Coast Line leading to Florida during the three-year period was 436,681, and over the Richmond, Fredericksburg & Potomac was 227,312. In considering this figure it is to be borne in mind that the latter line is only 116 miles in length. The return of the Maine Central shows that the mileage of foreign private cars over that line was 41,321, which is almost twice the mileage of

[1] Hereinafter referred to as the Nickel Plate.

Maine Central private cars on its own line. During the same period private cars of the Maine Central were moved only 2,028 miles over other lines.

There is also an extensive use of private cars by short lines, industrial roads, and lines owned, controlled, or used in the interest of some particular business. The mileage of private cars used by the latter lines is largely on foreign lines, and in numerous instances the home stations of the cars and the movements thereof are so far removed from the vicinity of the owning road that it is difficult to conceive the circumstances under which such movements could have been in the interest of or connected with the operation of the road owning the car. For example, the private cars of the Interstate Railroad made 4,296 miles on home lines and 21,544 miles on foreign lines; the cars of the Louisiana & Pacific made 167 miles on home lines and 61,046 miles on foreign lines, including travel for the account of the Longview, Portland & Northern; the cars of the Midland Terminal made 113 miles on home lines and 19,027 miles on foreign lines; the cars of the Minneapolis, Northfield & Southern made 160 miles on home lines and 15,058 miles on foreign lines; and the cars of Piedmont & Northern made 2,000 miles on home lines and 73,888 miles on foreign lines.

As a further illustration, attention is called to the situation disclosed with respect to the Louisiana & Pacific. This was one of three sawmill roads which composed the so-called Shreveport, Alexandria & Southwestern system, 91 miles in extent. The roads were owned and operated as subsidiary companies by the Long Bell Lumber Corporation, which has mills and plants in various sections of the country. According to Poor's and Moody's Manuals the following Long Bell Corporation officials are also officers of the subsidiary railways: Chairman, president, two vice presidents, and the secretary and comptroller. The carriers' replies to questions 2 and 3 of the questionnaire are reproduced in order to show clearly the cars and assignments:

Question 2. Statement of business, official, or other private passenger-train cars owned or leased and transported free or at less than published tariff rates during the years 1923, 1924, and 1925.

Car		
Initial	Number or name	If assigned, to whom
L & P Ry Co	Kansas	Assigned. These cars were owned by Louisiana & Pacific Railway Company which, with the Sibley, Lake Bisteneau & Southern Railway Company and the Woodworth & Louisiana Central Railway Company comprise the "Shreveport, Alexandria & Southwestern Railway System." The cars were used jointly by general officers of these system lines and also by general officers of the Mississippi Eastern Ry. Co. and Longview, Portland & Northern Railway Company, some of whose officers and directors are also officers and directors of the "Shreveport, Alexandria & Southwestern Railway System" lines.
L & P Ry Co	[illegible] Permanent, Kansas and May 4, 1924	
L & P Ry Co	[illegible] Assigned from L. P. & N. Ry. Co. July 15, 1924	

[illegible] C. C.

Question 3. Home cars on home railroad.

None. Headquarters of car located off line. Explanation: The business car of these lines is held at Kansas City, Mo., at which point are locate l the general offices of respondent.

These cars with home station at Kansas City, Mo., the headquarters of the Long Bell Corporation, made 167 miles on home lines and 61,046 miles on foreign lines, while these roads were used for a total of 60 miles by private cars of foreign lines. Most of the trips were made between Kansas City and Longview, Wash. There were several so-called inspection tours which embraced Mississippi, Louisiana, and Texas destinations. The home-line mileage on these trips ranged from 5 to 88 miles and the foreign-line mileage ranged from 2,500 to 2,559 miles. A list of ticket passengers on the trips of this system's cars, together with the advantages accruing to the families of the officials, indicates the real purpose of the cars. Included among the ticket passengers are the following Long Bell Lumber Corporation officials and employees:

Vice president.
Secretary to vice president.
Assistant to vice president.
General manager of Longview farm and wife.
Sales manager of sash and door department.
Manager of mercantile department.
Mill manager.
Second secretary to vice president.
Superintendent of construction.
Third secretary to vice president.
Clerk in mercantile department.
Treasurer and wife.
Architect.
Landscape architect.
Advertising manager.
Chief clerk.
Mill superintendent.

The returns show 65 passages on passes and 55 on tickets. Various members of the families of officials, including maids and valets, comprise a large portion of the travelers on both pass and ticket transportation. A statement of the movements of Louisiana & Pacific private cars on the Union Pacific was taken from the latter's return and is included as Appendix F.

The returns with respect to the Nevada Northern also illustrate how a small road with several private cars and with important non-carrier interests makes use of the private car. This road according to Poor's and Moody's Manuals operates 165 miles of broad-gage line in Nevada. The road is owned by the Nevada Consolidated Copper Company, which is controlled by the Utah Copper Company, which in turn is controlled by the Kennecott Copper Corporation. The same interests own or control the Copper River & Northwestern Railway in Alaska. Officers and directors of the Nevada Northern are officers or directors in one or more of the related corporations, namely: Copper River & Northwestern Railway, Nevada Consolidated Copper Company, Utah Copper Company, and Kennecott Copper Corpora-

tion. The return of the Nevada Northern shows that the road owns two private cars; one, the N. N. 101, has headquarters on the line at East Ely, Nev., while the other car, N. N. 100, is identified in the returns as follows: "Note: Home station of Nevada Northern 100 is Jersey City, N. J. (Erie Railroad)." This car was used extensively by the president of the Nevada Northern and by the president and vice president of the Copper River & Northwestern. A third car, which was moved extensively on the account of the Nevada Northern, is the car "Cyprus," which, according to the return, is owned by a vice president of that railway. The extent of the travel of cars charged to the Nevada Northern on the Western Pacific, Southern Pacific, and Union Pacific is shown in Appendix G.

The return shows that in most instances the owner of the "Cyprus" traveled as vice president of the Nevada Northern, but at other times he traveled as an official of the Bingham & Garfield. The return of the Ray & Gila Valley in referring to movements of the same official's car, "Cyprus," stated: "We have kept no record of the movements of * * * car on own line and were, therefore, delayed since receipt of your second request in searching out the dates of his semi-annual visits to the property in Arizona." This return also showed with respect to occupation that the official referred to "is the president and active executive in charge of operations of the Jackling-Hayden-Stone group of copper mines and subsidiary railways."

The returns show that a substantial portion of the total mileage of private cars, especially on foreign lines, was what is commonly referred to as "deadhead" mileage, that is, the cars were not occupied, except in some instances by an attendant. The purpose of such movements is to return the cars to their home stations or to move them to stations where they are to be occupied. On the Baltimore & Ohio and the Michigan Central approximately 3 per cent of the total mileage of foreign private cars was deadhead. On the Cleveland, Cincinnati, Chicago & St. Louis the percentage was 4, on the Santa Fe it was 5, on the Boston & Maine over 9, on the New York Central over 11, on the Richmond, Fredericksburg & Potomac over 12, and on the Atlantic Coast Line over 16.

The returns show numerous instances where private cars were deadheaded to and from off-line shops without charge. Also worthy of consideration is the matter of free switching service and free storage for private cars. A large number of the private cars covered by the returns are held at off-line stations when not in use. Many are so held at New York and the returns indicate that the matter of storage and switching of these cars is of considerable importance from the standpoint of operating expenditures.

In numerous cases cars were rented from the Pullman Company by officers of carriers, and such cars were moved without charge by the carriers. The movements of Pullman private cars occupied by railway officials and others over the Union Pacific and New York Central are summarized in Appendix H.

Numerous instances are shown where private cars of the carriers were loaned to officers of other carriers. As an illustration, Missouri Pacific car No. 1 was loaned on May 15, 1925, to the chairman of the board of the Manufacturers Railway for a trip from St. Louis to Louisville. The returns show that this official used a pass and that he was accompanied by seven persons holding tickets. Union Pacific car 101 was used for a trip from New York to Colorado Springs, Colo., during July and August, 1923, and was occupied by the widow and daughter of a former director, holding passes, and by five other persons holding tickets.

Many private cars which were transported free, or at less than tariff rates, are of private ownership as distinguished from carrier ownership. For example, Union Pacific car No. 1900 is owned by the widow of a former chairman of the board of one of the western carriers. Attention is called to the movement of this car during the period from July 16 to September 5, 1923, as indicated below:

July 16, 1923. Ogden, Utah, to Oakland Pier, Calif.	.....
July 16, 1923. Oakland to San Francisco, Calif.	Deadhead
July 17, 1923. San Francisco to Santa Barbara, Calif.	.....
July 30, 1923. Santa Barbara to Los Angeles, Calif.	Deadhead
July 31, 1923. Los Angeles to Santa Barbara, Calif.	Deadhead
Aug. 14, 1923. Santa Barbara to Los Angeles, Calif.	.....
Aug. 15, 1923. Los Angeles to Santa Barbara, Calif.	.....
Aug. 29, 1923. Santa Barbara to Los Angeles, Calif.	.....
Aug. 29, 1923. Los Angeles to Santa Barbara, Calif.	Deadhead
Sept. 1, 1923. Santa Barbara to San Francisco, Calif.	.....
Sept. 1, 1923. San Francisco to Oakland Pier, Calif.	Deadhead
Sept. 5, 1923. Oakland Pier, Calif., to Ogden, Utah.	.....

The private cars of railroad officials are intended to be offices on wheels for those whose duties require considerable travel over the line and when used for that purpose are an important facility for carrying on the business of the road. It is seldom, however, that these duties necessitate a movement of the car over other lines. In some cases such a movement may be justified for business reasons; for example, where it avoids a very circuitous haul over the home line. But the returns to our questionnaire indicate that private cars are often used for other than business purposes by railroad officers, their relatives, and friends. Moreover, they appear to be used in some instances for the benefit of an industry which controls the railroad. In other instances, their use in entertaining shippers may be for the purpose of obtaining business for the railroad. These

and other abuses are apparent from the returns, but we are here concerned primarily with the legality of the free transportation of the private cars of other carriers. We will, therefore, proceed to a consideration of the law applicable to the subject.

A passenger-train car is property. The provisions of the interstate commerce act relating to free transportation of passengers and property are contained in sections 1 and 22. In *American Express Co.* v. *United States*, 212 U. S. 522, the Supreme Court considered the question of whether common carriers could lawfully issue any—

> frank or other documents for the free transportation of property to the following persons, to-wit: The officers, agents, attorneys, and employees of said defendant and their respective families; the officers and employees of other express companies and their respective families; the officers and employees of any railroad or any other common carrier subject to the act to regulate commerce and its amendments, and their respective families.

An injunction had been issued by the lower court restraining the issuance of such franks and from transporting or forwarding for the persons above named, without demanding and receiving the lawful rate of payment therefor, any shipments of property subject to the provisions of the interstate commerce act and its amendments.

It was contended in that case that the custom of the express companies to issue such franks was one of long standing and presumably known to Congress; and that there was no record of any protest against it to or by this commission, or to Congress, nor any suggestion in any speech or report that it was supposed to be detrimental to the public interest, or that it was intended to be prohibited. On the other hand, it was contended for the United States that the only section of the interstate commerce act which relates to the carriage of property free or at reduced rates is section 22, and that there is nothing in it which by any possible construction can be taken as covering the granting or interchanging of franks, applying to the transportation of property by the express companies.

In disposing of the case and in affirming the decrees of the lower court the Supreme Court said:

> We are clearly of the opinion that, without doing violence to the language used in section one—including the proviso—its terms can not be held to include the transportation of goods.

The question was again presented in *Legality of Express Franks*, 50 I. C. C. 599, 603. There we said:

> The free carriage either of persons or of property is contrary to the general principles to be found in the act to regulate commerce, as amended. See sections 2, 3, and 6. The same principle is asserted even more strongly in the legislation accompanying the act itself and which was enacted in aid of its enforcement and for the punishment of those who offend its provisions. Any free carriage of passengers that is now lawful is authorized in the form of exceptions to the general

principle to be found in the so-called antipass provision of section 1 of the act. Any free carriage of property that is lawful is to be found in the exceptions noted in section 22 of the act. While the free carriage of certain of the excepted classes of passengers has thus been authorized even when traveling for pleasure or for their personal benefit, the spirit of the whole act forbids the free carriage of property except where public interests are involved under the conditions specified in section 22.

This decision was reaffirmed in *Legality of Express Franks*, 69 I. C. C. 627, decided July 10, 1922. The findings as to express companies in these respects are applicable to other carriers.

Any free carriage of property that is lawful is to be found in the exceptions noted in section 22 of the act. Compare *Int. Com. Com. v. Balt. & Ohio R. R.*, 225 U. S. 326; *Arizona Rates, Fares and Charges*, 61 I. C. C. 572; *Pacific Engineering & Construction Co. v. C. R. I. & P. Ry. Co.*, 56 I. C. C. 247. Section 22 provides in part that:

> • • • Nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat. • • • Nothing in this Act shall prevent any common carrier subject to this Act from giving reduced rates for the transportation of property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster, if such reduced rates have first been authorized by order of the commission (with or without a hearing). But in any such order the commission shall define such section and shall specify the period during which such reduced rates are to remain in effect.

The principal opposition to the proposed report came from the Association of Railway Executives. It is argued on behalf of this association that the free carriage of railway officials and employees authorized by the act includes a private car of another line occupied by one or more of them. In support thereof it is urged that such free carriage is universally recognized as not confined to the persons but includes their baggage, although baggage is property and the act does not specifically authorize its free transportation.

Baggage is usually transported without charge in addition to the passenger's fare, subject to certain restrictions as to weight and other matters. It is obvious that a person can not travel without certain property, such as clothing, and the transportation of this property is merely incidental to the transportation of the passenger. While the transportation of baggage may be spoken of as free, it is in reality covered by the passenger's fare. The property which may thus be transported without separate charge is defined in the tariffs, and when the weight permitted is exceeded separate charges are provided. Naturally, a person traveling on a pass is generally accorded the same baggage privileges as other passengers, and apparently he would have to pay the same charges as others on excess weight. There are other

limitations on the property which may be transported as baggage without separate charge; for example, such charges are often provided on bicycles and baby carriages. Recently certain carriers have provided for the checking of automobiles in baggage service at stated charges, which would apparently have to be paid whether the passenger is traveling on a pass or ticket. Such charges for the checking of certain articles are no doubt made because most passengers do not travel with these articles, and they are not considered ordinary or necessary baggage. In other words, their transportation is not such an ordinary and necessary incident to the transportation of the passenger as to require or warrant their transportation without additional charge. While the transportation of a private car may be in a sense incidental to the transportation of the persons riding therein, the use of such cars is certainly not so general that they may be considered an ordinary or necessary incident to the transportation of the passengers, as in the case of baggage. It seems clear from the foregoing that the free transportation of a private car can not be justified upon the same principle as the transportation of baggage.

As a matter of fact, the baggage tariffs specifically prohibit the checking of numerous articles which are commonly included in private cars, such as chinaware, foodstuffs, and furniture. Not only that but such articles beyond question would be subject to charges if shipped by freight or express. It is strange indeed if a railroad official is entitled to have articles transported free in a private car which could not be checked and would be subject to charges if shipped in any other manner. Surely if a person riding on a pass must pay to check a bicycle or automobile, the principle of free baggage can hardly be invoked in favor of a private car. A person riding on a pass is not entitled to have anything transported free which is not covered by the fare paid by any other passenger.

In our view it is too far-fetched to say that because a person lawfully entitled to use a pass may have transported free a limited amount of baggage he may also bring and have transported free a private car embracing a kitchen, dining room, stateroom, sitting room, and necessary equipment, supplies, and attendants. According to the views advanced on behalf of the railway executives the family, relatives, and friends of the official or employee in charge of the private car being transported free may without objection likewise be accommodated therein. And when the car is no longer needed it may, under their interpretation, be sent over foreign lines to its home station without charge, or if the car is at its home station and is desired elsewhere on foreign lines for use it may be brought without expense. Free transportation is contrary to the general policy of the act and the definiteness and clarity with which Congress has specified the

extent to which free transportation may be afforded by carriers subject to the act precludes the construction which counsel would have us place upon the pass provisions thereof.

The argument of the Association of Railway Executives that the carriers may lawfully haul the private cars of other lines without charge is also predicated on the theory that such a car is an instrumentality of commerce rather than an article of commerce. We are thus brought to a consideration of the question of when railway equipment generally may be transported without charge. Of course, a carrier may transport its own property without the payment of tariff charges. It would serve no useful purpose to require a carrier to transfer money from one pocket to another in payment of charges. Likewise, property which a carrier has hired or rented for the performance of its common-carrier duties may be transported the same as property which it owns. It is well known that freight cars and to some extent passenger cars move freely over foreign lines, and it may be helpful to consider the terms on which such cars are handled.

Freight cars in service are generally interchanged between the principal carriers throughout the country under rules of the American Railway Association. The carrier in possession of the car pays the owning line a certain amount for each day the car is on its line. This is referred to as per diem and is in the nature of rent for the use of the car. It is paid whether the car is loaded or empty, as the empty movement is considered incidental to the loaded movement, and the carrier in possession may permit an empty car to be loaded with revenue freight. This use of the freight cars of another carrier relieves the carrier in possession of the burden of furnishing its own equipment, which is a distinct benefit, and it participates in the revenue from the freight. Freight cars in regular service are not subject to transportation charges but such cars are subject to charges when the transportation is not in regular service. The consolidated classification provides certain charges per car per mile for the transportation of all kinds of railway equipment on their own wheels. For example, dining, parlor, and sleeping cars are charged from 23 to 30 cents per mile in the various territories. These charges apply on new cars moving from the place of manufacture to the home line before being placed in service, also on cars moving empty to and from repair shops off the home line, and on any other movements over foreign lines not in regular service. Apparently a car is in service when it is under load or has carried a load and is returning or seeking another load. In other words, so long as a car is being handled for revenue purposes, it is in service and not subject to charges; but when it is transported solely for the benefit of the owning line, the latter must pay for such transportation on another line.

Privately owned freight cars are also used by the carriers in transporting property of the owners. An allowance of so much per mile is paid by the carrier to the owner for the use of the car. This is based on the empty as well as the loaded movement, but if the empty movement exceeds the loaded movement the mileage allowance on the excess must be refunded, and in addition charges are assessed for the transportation of the car. Otherwise, no charge is made for the handling of a privately owned car in service, as its use benefits the carrier and is for revenue purposes. The charges in the consolidated classification for the transportation of cars not in service apply to privately owned as well as carrier equipment, no distinction being made because of private or carrier ownership.

Passenger cars of one carrier are sometimes operated over the lines of other carriers in maintaining through service. The terms on which this is done are a matter of contract, but in the absence of other arrangement the owning line is paid certain amounts per mile or per diem under rules of the American Railway Association. As in the case of freight cars, no charges are assessed for the handling of cars in service, but cars not in service are subject to the charges in the consolidated classification. The criterion for determining when a passenger car is in service would seem to be the same as in the case of a freight car; that is, whether the car is being handled for revenue purposes in the interest of all the carriers in the through route or solely for the benefit of the owning line.

Special, privately owned, or chartered cars for the exclusive use of special parties are transported in passenger trains under tariffs which provide for certain minimum revenues. In the case of sleeping and parlor cars, charges for a one-way movement are based on the authorized fare for each passenger, with a minimum of 25 adult fares, but not less than $42 for the car and party. The charges for a round-trip movement are similar, except the 25 fares are doubled or must be for the round trip, and the minimum revenue is $84. In either case, the surcharge must be paid for each passenger, with a minimum of 25 surcharges, but this is not used in computing the minimum revenue per car. When a car is moved empty or in charge of porter or other attendants, charges are assessed on the basis of 10 regular adult one-way fares, plus the authorized fare for each porter or attendant, except not more than three employees of common carriers may be carried free. In this case also the minimum revenue is $42, including fares of attendants, but the surcharge is not collected. In some of the tariffs the charges for empty movements apply to carrier-owned as well as privately owned equipment. The tariffs also provide for application of the minimum fares and revenue on carrier-owned cars equipped for certain special purposes, such as advertising,

exhibition, instruction, and the like. These are the provisions generally in effect, although there may be variations on individual lines.

The term privately owned cars is not defined in the tariffs, but its obvious meaning is cars owned by others than the carriers. Apparently a private car owned by an individual even though a railroad official would be subject to the tariff charges on privately owned cars. It would seem that if a railroad official must pay to have his own car moved, the free transportation of his person authorized by the act could hardly be deemed to include a private car owned by his company.

It will be seen from the foregoing that tariff charges are provided for the transportation in freight trains of both carrier and privately owned cars of all kinds, when they are handled solely for the benefit of the owner and not for revenue purposes. It would not be seriously urged that such transportation could be rendered free if an attendant or other person having a pass should ride in the car. The tariffs also provide minimum charges for the transportation in passenger trains of special, privately owned, or chartered cars for the exclusive use of special parties. Apparently these minimum charges would not be lessened or affected in any way if a person or persons having passes should ride in the car. All of these charges show that there is nothing in the nature of railway equipment which justifies its transportation without charge, except when it is being handled for revenue purposes in the interest of the carrier performing the service. Even then the revenue from a passenger car used exclusively by a special party must be sufficient to warrant its transportation.

The propriety of tariff charges for the movement of railway equipment on its own wheels has been recognized by us in numerous cases. In two of them in fact we found that the charges assessed on freight cars were applicable even though they were transported under load. *Pacific Engineering & Construction Co.* v. *C., R. I. & P. Ry. Co.*, *supra*; *McCloud River Ry. Co.* v. *S. P. Co.*, 56 I. C. C. 287. Although charges are not generally assessed on cars under load, the charges assailed in the cases cited were upheld on the ground that the carriers had never agreed to accept the cars in interchange service. It was recognized that loaded cars are presumed to have been accepted in interchange service, but this presumption was found to have been overcome under the circumstances of these cases. Stated in another way, the charges were found applicable because the carriers had not hired the cars and they did not pay the usual mileage allowance for their use. In a more recent case we found that the charges assessed on certain cars hauled under load were not applicable because the cars had been accepted in interchange service and the mileage allowance was paid for their use. *Haffner Thrall Car Co.* v. *N. P. Ry. Co.*, 146 I. C. C. 47. The theory underlying these decisions is that a carrier may not assess

charges on a car which it has hired the use of, but it may and should assess charges when it has not hired the use of the car even though it is hauled under load.

The transportation of a private car of another carrier is ordinarily for the benefit of the owning line or its officials and not for revenue purposes. While ticket passengers may sometimes occupy such a car, they do so by invitation, and the carrier performing the transportation is not at liberty to make use of the car by putting other passengers in it. The returns to our questionnaire indicate that it is seldom, if ever, that the number of ticket passengers is sufficient to make the hauling of the private car of another carrier profitable to the carrier performing the service. This is further indicated by the additional fact that such passengers apparently do not pay the surcharge, which is assessed on persons riding in Pullman and privately owned or chartered cars. Indeed, the few ticket passengers sometimes riding in the private car of another carrier could probably be accommodated in other equipment that must be hauled anyhow, and the transporting carrier would receive more revenue if they rode in an ordinary Pullman car. Under these circumstances a carrier hauling the private car of another line can not be said to have hired its use, as it would have no interest in doing so and pays no rental therefor. Even if car hire should be provided on private cars, it would obviously be a mere subterfuge which could not change the legality of the practice. Our conclusion is that the transportation of the private car of another carrier is not of such advantage to the carrier performing the service as to warrant its performance without charge, on the same principle as the free handling of revenue-producing equipment.

The Association of Railway Executives asserts that the carriers have always hauled the private cars of other lines without charge, that this practice has been well known to the commission, and that we have expressly approved it. It is contended, therefore, that we have interpreted the act as permitting the practice, and cases are cited to the effect that such an administrative interpretation is entitled to considerable weight where it is long continued and uniform.

In support of this contention it is pointed out that our conference ruling No. 95 and our pass regulations of 1917 both prescribed a form of pass for railway officials and employees which included the word "car." Of course, such a pass would be proper for the movement of a home-line private car, and it is understood that the practice is to issue passes for such cars, at least on some lines. But the Association of Railway Executives urges that the form of pass prescribed applied to foreign-line cars, since it provided for naming the carrier, which was not required in the case of a pass for the officers or employees of

the home line. The form of pass does not specifically indicate whether it is for home or foreign-line cars or both. It might in fact be construed as including any kind of a car, even though subject to tariff charges. Under these circumstances we think that the pass form should be given a construction in harmony with the law. Certainly we never intended to approve the practice of issuing passes for the private cars of other lines. However, our conference rulings have all been canceled, and our pass regulations will be amended so as to make clear that a car pass may be issued only for home-line cars.

It is also argued that where our pass regulations refer to passes for sleeping, parlor, *and other accommodations*, the words in italic include a private car of another line. We think those words were meant to cover such similar accommodations as a stateroom or berth on a steamer. A private car of another line can not be regarded as an accommodation furnished by the carrier issuing the pass. We do not see how the words in question can be given the construction sought.

Our attention is not directed to any decision of a formal or informal nature in which we have approved the practice of handling private cars of other lines without charge, and diligent search has failed to disclose any such decision. In two cases we referred to the use of "car and party" passes by officers of so-called tap lines or industrial lines as being improper and unlawful. *The Tap Line Case*, 23 I. C. C. 277, 298; *Colorado Free Pass Investigation*, 26 I. C. C. 491, 494. The only other case in which any consideration has heretofore been given to the free transportation of private cars was *The Five Per Cent case*, 31 I. C. C. 351. At page 410 of that report we referred to revenue which the carriers might have derived by charging tariff rates on private cars handled free. In effect we told the carriers that they should look to this among other means of increasing their revenues, but apparently they have not heeded our recommendation. The lawfulness of the practice was not brought in issue and was not passed upon in that proceeding. Clearly we have never ruled that private cars may lawfully be transported without charge for other carriers or their officials.

It may be assumed that the practice of hauling the private cars of other lines without charge prevailed at the time of the passage of the act to regulate commerce. That, however, does not indicate an intention on the part of Congress to permit the practice, since, as stated in our third annual report, the law aimed at the correction of the abuses of free transportation. Nor can the long existence of the practice of issuing passes for foreign-line private cars be regarded as legalizing it. As previously stated, in *American Express Co.* v. *United States*, *supra*, the Supreme Court held that an express company

could not lawfully issue franks to certain classes of persons for the transportation of property, notwithstanding the contention that the custom of issuing such franks was one of long standing and no protest against the practice had been made to or by the commission. This is the first time that the lawfulness of the practice of issuing passes for foreign-line private cars has been brought in issue before us. Of course, good faith might be urged in defense of past violations, but obviously it could not be so urged in respect of a violation after the law has been construed by this commission.

It is urged that while the practice of transporting foreign-line private cars without charge is lawful our investigation has shown that the courtesy extended as between roads has in some instances been abused. It is proposed to correct such abuses by the adoption of a code of ethics limiting such courtesies and calling for reports to be rendered covering the movement of private cars on foreign lines. Counsel stresses the point that although the practice of transporting private cars without charge is of long standing we have not declared it unlawful. As previously stated, this is the first time the legality of the practice has been before us for decision. Apparently it is the first time the practice has been given serious consideration by the Association of Railway Executives since only after our investigation were the abuses of what they term a lawful courtesy discovered. There is no more reason for construing our failure to declare the practice unlawful as approving the practice, than there is for construing the failure of the executives to correct the long-existing abuses as approving them. After observing our finding that the transportation of private cars over foreign lines should be paid for through the assessment of a just and reasonable charge the executives will still have a duty to perform in eliminating unnecessary use of private cars and in thereby promoting efficient and economical management as contemplated by the act.

The Chicago & Eastern Illinois was the only carrier which filed exceptions to the proposed report. It urges that the assessment of charges for the movement of private cars over foreign lines would handicap it in the solicitation of traffic in the Southeast and Southwest. This line is a part of through routes to and from points in those territories which it can reach only over the rails of its connections, while certain competitors such as the Illinois Central and the Santa Fe extend all the way to many of the important southeastern or southwestern points. Apparently the Chicago & Eastern Illinois has been sending its private cars over the lines of its competitors as well as other carriers for the purpose of soliciting traffic in their territory. It is not clear why the use of private cars is so important in the solicitation of traffic, which is ordinarily handled by traffic

representatives, such as this line has at various points in the Southeast and Southwest. During the three years covered by our questionnaire, the private cars of the Chicago & Eastern Illinois traveled 28,274 miles on foreign lines, while it hauled the private cars of other carriers 44,223 miles. The assessment of reasonable charges for such movements would, therefore, have been to the advantage of this carrier.

Reciprocity between carriers is no justification for the free transportation of private cars. It will be observed that railway equipment generally which is not in revenue service is not handled on that principle, and it could not be so handled lawfully. Moreover, the returns to our questionnaire show that there is seldom a fair balance between the service performed by different carriers in transporting the private cars of each other. On the contrary, the returns show that there is often a wide difference in the relative amount of service performed in hauling such cars. No one has contended that the theory of reciprocity warrants the free handling of private cars. Transportation must be paid for in cash and not in commodities or services. *In re Contracts for Free Transportation*, 16 I. C. C. 246; *United States* v. *C. I. & L. Ry. Co.*, 163 Fed. 114; *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 270.

As heretofore pointed out, the tariffs provide certain minimum fares and revenues for the movement of special, privately owned, or chartered cars, which are evidently intended to cover the service of transporting the car. This is apparent from the fact that the charges are the same whether the car is occupied by 1 passenger or 25. Especially in the case of cars moving empty or in charge of porter, it is manifest that the minimum fares and revenue are intended to compensate for the movement of the car rather than its contents. Apparently the only material difference between the cars on which these minimum charges apply and the private cars of other carriers is the matter of who owns or is using them. In so far as these charges do not apply to the private cars of other carriers, they are unjustly discriminatory and unduly preferential and prejudicial. See *In the Matter of Restricted Rates*, 20 I. C. C. 426, wherein it was found in violation of sections 2 and 3 to charge less for the transportation of railway coal than the rates charged on commercial coal. This decision was upheld by the Supreme Court in *Int. Com. Com.* v. *Balt. & Ohio R. R.*, *supra*.

We find that the transportation or movement of private passenger cars, including so-called office cars, by one carrier for another or its officials, free or at other than published tariff rates is contrary to the provisions of the interstate commerce act. The assessment of a just and reasonable charge by carriers transporting private cars for others, and for services rendered in connection therewith, is not

only required by the act but will be in keeping with efficient and economical management.

This finding does not extend to the point of saying that it is unlawful for private cars of one carrier to be transported over the lines of other carriers, but is confined to the assertion that under existing law the transportation of private cars on foreign lines should be paid for through the assessment of a just and reasonable charge.

As shown in Appendix A, a substantial percentage of the occupants of private cars hauled free, or at less than tariff rates, were business associates, relatives, or friends holding tickets which entitled them only to transportation in the ordinary coach. A total of 22,391 passenger-miles were traveled by such persons in private cars of the Nickel Plate and a total of 208,203 passenger-miles were traveled by such persons in private cars of the Chicago, Rock Island & Pacific during the three-year period. The returns of other carriers show similar travel.

Carriers according passengers the comforts and facilities of private cars, including berth and other accommodations, are treating unequally and unfairly the passengers accorded the ordinary coach facilities but who are charged at the same rate as those traveling in private cars, and they also discriminate against those who pay the surcharge for riding in ordinary sleeping or parlor cars and privately owned or chartered cars.

It is provided in section 2 of the act:

> That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

It is also provided in paragraph 1 of section 3 of the act:

> That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The Association of Railway Executives urges that the question of whether it is unjustly discriminatory and unduly prejudicial to furnish private-car accommodations to invited guests without charge

depends upon the circumstances of each individual case. They seem to think that circumstances may warrant the furnishing of a berth and other accommodations in a private car without charge, provided only that the passenger has purchased a ticket entitling him to passage. We are unable to see how a berth or other accommodations for which a tariff charge is usually made can be furnished free any more than a passenger can be carried without charge. A carrier which furnishes free a berth or other accommodations in a private car similar to those for which tariff charges would be assessed if the passenger rode in a Pullman car is clearly guilty of violating section 6 of the act.

It is suggested that the furnishing of a berth or other accommodations in a private car is merely a courtesy extended by one passenger to another. The furnishing of a berth or other accommodations in a Pullman or private car without charge to a person not lawfully entitled to free transportation is just as clear a violation of the spirit and plain intent of the act as carriage without the purchase of a coach ticket.

The railway executives further urge that a hearing must be held in each individual case to determine whether the circumstances and conditions are so similar as to warrant an order requiring the removal of the discrimination and prejudice. This argument sounds like that made by the carriers soon after the passage of the act to regulate commerce. It was contended then that a difference in circumstances and conditions warranted the issuance of passes to certain classes of persons, such as public officials. That contention was rejected in *In Re Persons Free or at Reduced Rates by B. & M. R. R. Co.*, 5 I. C. C. 69, 78; and *William H. Harvey* v. *Louisville & Nashville R. R. Co.*, 5 I. C. C. 15.

One of the fundamental purposes of the act is "to compel the carrier as a public agent to give equal terms to all" and "to cut up by the roots every form of discrimination, favoritism, and inequality." *New Haven R. R.* v. *I. C. C.*, 200 U. S. 361; *L. & N.* v. *Mottley*, 219 U. S. 467; *U. S.* v. *Union Stock Yard*, 226 U. S. 286.

We further find that the transportation of persons in private passenger cars, including berth and other accommodations for which a charge is made in Pullman cars, at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory, unduly preferential of the former, and unduly prejudicial to the latter as well as those who pay the surcharge for riding in ordinary sleeping or parlor cars and privately owned or chartered cars.

The carriers will be expected to cease and desist from the violations of the act herein found, but in view of the penalties provided for such violations, no order appears to be necessary.

BRAINERD, *Commissioner*, dissenting in part:

The majority's decision is based upon information obtained by the commission from returns made to a questionnaire sent to Class I and II carriers. No hearing has been held and no opportunity for the introduction of evidence or the examination or cross-examination of witnesses has been granted. This report is adopted over the carriers' exceptions based in part upon a failure to accord them a full hearing. While I concur in much if not all that is said by the majority, I do not wish to be understood as approving the practice of adopting formal reports containing findings of fact or conclusions of law based upon an investigation, whether upon our own motion or otherwise, without having first held a hearing at which all parties have been afforded an opportunity to introduce evidence and examine and cross-examine witnesses in such manner as may be necessary to conform to the requirements of due process of law. The more liberal the practice, the more imperative the obligation to preserve the essential rules by which rights are determined.

I am authorized to state that COMMISSIONERS WOODLOCK and PORTER concur in the views herein expressed.

APPENDIX A

Comparative

	Number of private cars	Home cars on home railroad: Transportation: Trips	Home cars on home railroad: Transportation: Carload pounds	Home cars on home railroad: Transportation: Passengers: Paid	Home cars on home railroad: Transportation: Passengers: Ticketed	Home cars on home and foreign railroads: Transportation: Trips	Home cars on home and foreign railroads: Transportation: Carload pounds	Home cars on home and foreign railroads: Transportation: Passengers: Paid	Home cars on home and foreign railroads: Transportation: Passengers: Ticketed	Foreign cars on home railroad: Transportation: Trips	Foreign cars on home railroad: Transportation: Carload pounds	Foreign cars on home railroad: Transportation: Passengers: Paid	Foreign cars on home railroad: Transportation: Passengers: Ticketed	Cost of repairs and other charges while on own line: Assessed to own line	Cost of repairs and other charges while on own line: Assessed to owners on foreign railroad
Class I roads															
Year 1923	917	19,033	60,3[illegible]	39,0[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	$[illegible]	$[illegible]
Year 1924	930	18,538	61,3[illegible]	39,6[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Year 1925	946	19,[illegible]	64,[illegible]	42,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total, Class I roads		56,121	186,[illegible]	121,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Class II roads															
Year 1923	61	174	5[illegible]	3,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Year 1924	61	194	5[illegible]	3,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Year 1925	665	142	3[illegible]	3,[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total, Class II roads		510	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Switching and terminal roads															
Year 1923	4	3	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Year 1924	4	3	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Year 1925	4	3	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
Total, switching and terminal roads		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Yearly totals															
Year 1923		19,179	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Year 1924		18,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Year 1925		19,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Grand total (3 years)		56,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

NOTE.—The apparent discrepancies between the number of trips and carloads as shown under the heading "Home cars on home and foreign railroads" and the amounts headed "Foreign cars on home railroads" is due (a) to differences in methods of keeping records and reporting, (b) the fact that the switching road sheets one report covering trips containing several foreign lines (each handling line making a separate report), and (c) the trips of private cars of the American Railway Express System, Western Union, Pullman Company officials and small roads which were not included in the order and did not file returns.

APPENDIX B

Statement showing, for 3 year period, the mileage made by private passenger-train cars on lines of carriers listed below

The column "Home cars on home roads" contains the home-line portion of trips made on home and foreign lines. The asterisk (*) indicates roads whose private-car mileage on foreign lines exceeded the mileage on the home line and whose foreign-line mileage was greater than the mileage furnished foreign-line private cars.

Name of railroad	Mileage		
	Home cars on home roads	Home cars on foreign roads	Foreign cars on home roads
Class I roads			
Ann Arbor R. R.*	49,439	57,078	4,284
Akron, Canton & Youngstown*	1,621	13,350	105
Atchison, Topeka & Santa Fe			
Gulf, Colorado & Santa Fe	3,583,454	139,902	548,018
Panhandle & Santa Fe			
Atlanta & West Point			
Western Ry. of Alabama	44,279	7,879	18,465
Atlanta, Birmingham & Atlantic	119,471	3,947	1,051
Atlantic Coast Line	735,231	96,507	456,683
Baltimore & Ohio	1,107,107	160,985	247,825
Bangor & Aroostook	73,595	31,053	1,777
Bessemer & Lake Erie	10,876	1,968	469
Birmingham & Southern	1,607	60	41
Boston & Albany	29,898	4,184	34,024
Boston & Maine	57,323	15,701	105,891
Buffalo & Susquehanna	2,119	1,307	
Buffalo, Rochester & Pittsburgh	82,086	35,150	36,507
Canadian National, mileage in United States only	21,919		1,019
Canadian Pacific	47,067	6,010	1,373
Central of Georgia	343,488	62,013	51,302
Central R. R. of N. J.	57,669	11,835	5,520
Central Vermont	58,110	42,508	58,318
Charleston & Western Carolina*	31,315	45,895	4,214
Chesapeake & Ohio	593,054	111,465	169,305
Chicago & Alton	256,129	90,050	43,716
Chicago & Eastern Illinois	71,095	28,274	44,223
Chicago & North Western	700,031	32,063	81,191
Chicago, Burlington & Quincy	2,321,624	336,847	316,703
Chicago Great Western	102,812	40,744	40,936
Chicago, Indianapolis & Louisville	90,591	9,345	40,356
Chicago, Milwaukee & St. Paul	2,003,595	118,013	158,151
Chicago, Rock Island & Pacific	917,857	184,773	246,249
Chicago, Rock Island & Gulf			
Chicago, St. Paul, Minneapolis & Omaha	30,541	18,986	45,061
Cincinnati, Indianapolis & Western	17,603	17,472	3,804
Cleveland, Cincinnati, Chicago & St. Louis			
Cincinnati Northern	459,653	147,196	212,911
Evansville, Indianapolis & Terre Haute			
Peoria & Eastern			
Clinchfield	38,906	7,197	12,153
Columbus & Greenville			552
Colorado & Wyoming*	318	12,873	
Cumberland & Pennsylvania*	349	43,613	
Delaware & Hudson*	110,309	137,378	32,000
Delaware, Lackawanna & Western	123,606	42,614	15,604
Denver & Rio Grande Western	433,106	91,999	97,901
Denver & Salt Lake*	4,132	8,465	478
Detroit & Mackinac	9,313	266	784
Detroit & Toledo Shore Line			450
Detroit, Toledo & Ironton			2,729
Duluth & Iron Range	11,934	10,208	6,894
Duluth, Missabe & Northern*	22,100	36,759	4,875
Duluth, South Shore & Atlantic	48,816	7,024	3,118
Duluth, Winnipeg & Pacific			14,490
Elgin, Joliet & Eastern	1,868	4,921	
Florida East Coast	83,056	68,456	157,129
Fort Smith & Western	25,998	155	
Georgia & Florida*	46,913	53,640	1,755
Georgia R. R.	55,608	1,002	29,720
Grand Trunk Western	78,728	34,779	82,039

Name of railroad	Mileage		
	Home cars on home roads	Home cars on foreign roads	Foreign cars on home roads
Class I roads—Continued			
Erie R. R.			
Chicago & Erie			
New York, Susquehanna & Western	545,759	119,049	108,801
Wilkes-Barre & Eastern			
Northern Railroad of New Jersey			
Great Northern	1,361,500	154,194	165,151
Green Bay & Western			
Kewaunee, Green Bay & Western	5,226		896
Ahnapee & Western			
Gulf & Ship Island			[1] 14,687
Gulf Coast Lines	140,784	44,160	107,610
Gulf, Mobile & Northern	132,089	39,851	5,418
Hocking Valley*	15,587	17,486	10,628
Illinois Central	1,288,374	229,770	314,172
Yazoo & Mississippi Valley	110,985	75,475	69,136
International Great Northern	46,985	58,038	4,731
Kansas City, Mexico & Orient*			
Kansas City Southern	284,557	141,640	19,968
Texarkana & Fort Smith	30,288		587
Kansas, Oklahoma & Gulf	1,250	1,979	484
Lake Superior & Ishpeming*	3,800	640	2,243
Lehigh & Hudson	8,566	2,472	803
Lehigh & New England	199,405	79,263	18,209
Lehigh Valley	32,376	34,034	5,936
Long Island*	73,510	2,640	4,281
Louisiana & Arkansas	5,174	753	5,081
Louisiana Ry. & Navigation Co.	29,711	2,203	1,102
Louisiana Ry. & Navigation Co. of Texas	469,376	107,440	147,830
Louisville & Nashville	7,838	196	5,178
Louisville, Henderson & St. Louis	21,382	2,028	41,521
Maine Central	436,184	143,797	180,030
Michigan Central	29,502	(1)	589
Midland Valley	122,928	14,051	8,004
Minneapolis & St. Louis	209,859	92,034	89,009
Minneapolis, St. Paul & Sault Ste. Marie	19,818	8,572	164
Mississippi Central	8,414		
Missouri & North Arkansas	497,119	149,786	144,786
Missouri-Kansas-Texas	1,314,898	233,250	190,730
Missouri-Kansas-Texas of Texas	333,388	73,454	16,346
Missouri Pacific			4,192
Mobile & Ohio			132
Monongahela	124,087	48,766	35,021
Montour	18,490	42,392	1,906
Nashville, Chattanooga & St. Louis	11,365	51,315	1,002
Nevada Northern*			
New Orleans-Great Northern*	1,315,769	313,253	623,650
New York Central	378,198	254,814	26,693
Ohio Central Lines	148,075	72,798	109,965
New York, Chicago & St. Louis	30,411	644	5,832
New York, New Haven & Hartford	419,470	192,727	146,793
New York, Ontario & Western	73,711	41,069	6,310
Norfolk & Western	1,472,087	134,232	198,876
Norfolk Southern	48,135	24,970	2,384
Northern Pacific	2,048,556	307,264	720,473
North Western Pacific	196,627	30,781	50,554
Pennsylvania			
Pere Marquette	20,621	65,312	9,901
Pittsburgh & Lake Erie*			
Youghiogheny Northern	2,308	416	160
Lake Erie & Eastern	1,074	16,873	
Pittsburg & Shawmut			414
Pittsburgh & West Virginia*	53,645	52,962	7,143
Pittsburg, Shawmut & Northern	18,727	53,271	227,312
Reading System	9,113	29,073	40,139
Richmond, Fredericksburg & Potomac			
Rutland	1,146,602	172,435	129,508
St. Louis-San Francisco			
St. Louis-San Francisco Ry. of Texas	590,783	99,165	22,584
St. Louis Southwestern			
St. Louis Southwestern of Texas	39,621	13,972	7,262
San Antonio, Uvalde & Gulf	628,940	139,933	175,611
Seaboard Air Line	2,243,138	308,019	352,530
Southern System	1,991,832	426,064	771,044
Southern Pacific	625,790	144,582	270,790
Southern Pacific in Texas			

[1] No record.

Name of railroad	Mileage		
	Home cars on home roads	Home cars on foreign roads	Foreign cars on home roads
Class I roads—Continued			
Spokane International			4,544
Spokane, Portland & Seattle	82,249	20,704	69,948
Tennessee Central	32,784	1,678	2,651
Texas & Pacific	510,377	81,678	81,098
Toledo, Peoria & Western	5,306	4,541	4,080
Tampa & Gulf Coast			5,005
Trinity & Brazos Valley	40,049	11,819	6,342
Ulster & Delaware			222
Union Pacific			
Oregon-Washington R. R. & Nav. Co.			
Oregon Short Line	3,022,909	281,964	469,155
Los Angeles & Salt Lake			
St. Joseph & Grand Island			
Virginian	71,830	44,523	4,306
Wabash	394,092	128,896	92,958
Western Maryland	21,050	8,154	2,208
Western Pacific	121,306	26,150	46,978
Wheeling & Lake Erie	98,316	58,031	1,417
Class II roads			
Apache Railway			1,008
Ashley, Drew & Northern			41
Arkansas & Louisiana Missouri	711	891	161
Birmingham & Northwestern			797
Birmingham & Southeastern			30
Blue Ridge Railway			83
Brimstone Railway & Canal			13
Butler County Ry			133
Cambria & Indiana			428
Chesapeake Beach	687		13
Chestnut Ridge			4
Christie & Eastern			22
Cisco & Northeastern			112
Clinton & Oklahoma Western			302
Charlotte Harbor & Northern			3,491
Columbia, Newberry & Laurens			525
Copper Range*	598	2,428	84
Cornwall R. R			22
Dayton & Goose Creek			46
De Queen & Eastern			136
Durham & Southern			2,131
East Broad Top R. R. & Canal Co	1,054		
Escanaba & Lake Superior	510		508
Fonda, Johnstown & Gloversville	1,389		52
Georgia, Florida & Alabama	434	1,148	1,953
Georgia, Southwestern & Gulf			288
Gulf & Sabine River			24
Huntingdon & Broad Top*	3,310	7,624	
Illinois Terminal Co			33
Interstate R. R*	4,296	21,544	74
Jefferson Southwestern			22
Lake Erie, Franklin & Clarion	836		
Ligonier Valley			84
Live Oak, Perry & Gulf			44
Longview, Portland & Northern*	10	6,832	60
Louisiana & Pacific*	157	54,214	
Louisiana & Northwest	992	887	99
Louisville & Wadley			40
Midland Terminal*	113	19,027	
Macon, Dublin & Savannah	1,488	940	7,116
Manistee & Northeastern			1,049
Magna Arizona			282
Mineral Range	776		
Minneapolis & Rainy River			76
Minarets & Western			106
Minneapolis, Northfield & Southern*	160	15,058	
Minneapolis, Red Lake & Manitoba			48
Missouri Southern			324
Mississippi Southern			104
Minnesota & International	19,450	6,676	7,615
Mississippi River & Bonne Terre			119
Missouri Illinois			140
Nevada, California, Oregon	4,420		
Newport & Richford	3,457	9,312	366
New Jersey & Indiana			408
Oklahoma City-Ada-Atoka	5,618	2,236	504
Pacific & Idaho Northern	5,160		

Name of railroad	Mileage		
	Home cars on home roads	Home cars on foreign roads	Foreign cars on home roads
Class II roads—Continued			
Piedmont & Northern*	2,000	73,888	
Pittsburgh, Lisbon & Western			46
Quanah, Acme & Pacific Ry.*	2,560	37,633	586
Raleigh & Charleston			150
Raritan River			24
Red River & Gulf			158
Rio Grande & Eagle Pass			46
Roscoe, Snyder & Pacific			30
San Diego & Arizona*	8,796	25,936	7,872
Savannah & Atlanta			580
Sewell Valley			240
Sierra Ry. Co. of California			790
South Georgia Ry			213
Sugarland Ry.*	268	41,250	
Tampa & Gulf			5,005
Tallulah Falls			112
Tennessee R. R	312		
Texas Midland*	1,001	23,128	
Texas Mexican*	15,184	20,731	1,164
Texas Southeastern			90
Tonopah & Goldfield	2,248	1,858	62
Tonopah & Tidewater	4,636		1,506
Bullfrog & Goldfield			452
Tuckerton	968	3,058	264
Tucson, Cornelia & Gila Bend*			323
Virginia & Truckee Ry			188
Washington, Idaho & Montana			528
Weatherford, Mineral Wells & Northwestern			40
Western Allegheny	10,813	1,672	206
Wichita Falls & Southern R. R			984
Winston-Salem Southbound			108
Wrightsville & Tennille			2,340
Yosemite Valley			
Switching and terminal roads			
Alton & Southern	264		247
Belt Ry. of Chicago			351
Chicago & Western Indiana	67	1,096	11
Chicago Junction*			3,207
Indiana Harbor Belt			41
Indianapolis Union			55
Peoria Railway Terminal Co			41
Portland Terminal Ry			
Terminal Ry. Ass'n of St. Louis*		14,268	4,582
Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans			295
Toledo Terminal R. R			748
Troy Union Railroad			2
Union Ry. (Tenn.)			
Union R. R. (Penn.)	88		

APPENDIX C

Movement of private cars occupied by directors of Pennsylvania Railroad

Date	Destination	Mileage	
		Home line	Foreign lines
First director:			
Jan. 6, 1923	Palm Beach, Fla	270	2,281
June 29, 1923	Mount Desert Ferry, Me	182	1,056
Sept. 21, 1923	do	182	1,056
Jan. 10, 1924	Palm Beach, Fla	269	2,135
Feb. 22, 1924	do	270	2,110
June 30, 1924	Mount Desert Ferry, Me	182	1,056
July 23, 1924	do	182	1,056
Jan. 15, 1925	Palm Beach, Fla	270	2,149
Feb. 11, 1925	do	269	2,149
Mar. 26, 1925	Deadhead one way	270	2,149
June 30, 1925	Mount Desert Ferry, Me., deadhead return	182	1,056
Second director:			
Aug. 20, 1923	Boston, Mass	875	491
Oct. 12, 1923	Hot Springs, Va	736	570
Jan. 15, 1924	Norfolk, Va	1,022	375
Jan. 21, 1924	do	270	375
Feb. 13, 1924	Miami, Fla	270	2,239
Mar. 20, 1924	do	270	2,239
Nov. 23, 1924	Norfolk, Va., deadhead one way	270	443
Dec. 30, 1924	Lake Placid, N. Y	524	666
Jan. 29, 1925	Miami, Fla	624	2,515
Jan. 16, 1925	Elizabeth City, N. C	1,434	982
Apr. 5, 1925	Miami, Fla	852	2,281
Nov. 20, 1925	Elizabeth City, N. C	1,066	839
Third director:			
Feb. 9, 1923	Fayetteville, N. C	270	655
Feb. 20, 1923	Pinehurst, N. C	216	702
Mar. 16, 1923	Fayetteville, N. C	270	653
Mar. 23, 1923	Pinehurst, N. C	270	694
Feb. 19, 1924	do	270	698
Mar. 18, 1924	do	270	702
Jan. 20, 1925	Fayetteville, N. C	450	655
Feb. 25, 1925	Pinehurst, N. C	269	705
Mar. 18, 1925	do	270	728
Apr. 8, 1925	Fayetteville, N. C	270	655
Dec. 3, 1925	do	270	655
Fourth director:			
Feb. 3, 1923	South Boca Grande, Fla	270	2,252
Mar. 22, 1923	do	269	2,084
Sept. 6, 1923	Naponoch, N. Y	212	206
Sept. 19, 1923	do	212	206
Jan. 15, 1924	South Boca Grande, Fla	269	2,116
Mar. 23, 1924	do	270	2,317
Sept. 8, 1924	Napanoch, N. Y	195	206
Sept. 22, 1924	Napanoch, N. Y., deadhead going	197	412
Fifth director:			
Aug. 1, 1923	Boston, Mass	182	464
Aug. 31, 1923	do	182	464
Aug. 1, 1924	Boston, Mass., deadhead return	182	464
Aug. 30, 1924	Boston, Mass., deadhead going	182	464
Aug. 1, 1925	Boston, Mass., deadhead return	182	464
Aug. 31, 1925	Boston, Mass., deadhead going	182	464
Sixth Director:			
Feb. 6, 1923	South Boca Grande, Fla	270	2,114
Mar. 20, 1923	do	270	2,086
Apr. 22, 1924	Brunswick, Ga	270	1,462
Aug. 17, 1925	——, Canada, deadhead return	182	1,448
Sept. 9, 1925	Montreal, Canada, deadhead going	182	1,093
Seventh director:			
Nov. 22, 1924	Charleston, S. C	269	1,025
Jan. 3, 1925	do	450	1,025
Jan. 30, 1925	Palm Beach, Fla., deadhead one way	270	2,519
Feb. 25, 1925	do	270	2,519
Nov. 17, 1925	Charleston, S. C	269	1,025
Eighth director:			
Feb. 13, 1923	Miami, Fla	363	2,759
Mar. 9, 1923	Ormond, Fla	270	1,754
Aug. 23, 1923	Buffalo, N. Y	507	485

APPENDIX D

Movement of private cars occupied by a vice president of one carrier and executive of others

Car	Reported leaving	Date	For—	Returned to—	Date	Mileage: On reporting road	Mileage: On foreign lines
D. & H. report:							
D. & H. 400	Albany, N. Y.	Jan. 21, 1923	Chicago, Ill., and San Francisco, Calif.	Albany, N. Y.	Mar. 2, 1923	15	7,127
Do	do	Apr. 30, 1923	New York, N. Y.	do	May 3, 1923		282
Do	do	May 13, 1923	Lyon Mountain and New York, N. Y.	do	May 8, 1923	407	574
Do	do	May 16, 1923	Washington, D. C.	do	May 24, 1923	5	2,435
Do	do	June 17, 1923	Chicago, Ill.	do	June 23, 1923	5	2,125
Do	do	June 23, 1923	Lyon Mountain and New York, N. Y.	do	June 29, 1923	816	284
Do	Plattsburg, N. Y.	July 8, 1923	San Francisco, Calif.	do	July 27, 1923	102	7,157
Do	Albany, N. Y.	July 28, 1923	Lyon Mountain and Plattsburg, N. Y.	do	Aug. 3, 1923	732	438
Do	Lyon Mountain, N. Y.	Aug. 15, 1923	New York, N. Y.	do	Aug. 22, 1923	402	200
Do	do	Aug. 20, 1923	do	do	do	202	284
D. & H. 199	Albany, N. Y.	Aug. 25, 1923	Plattsburg and New York, N. Y.	do	Aug. 27, 1923	102	200
D. & H. 500	do	Sept. 13, 1923	Lyon Mountain and New York, N. Y.	do	Sept. 18, 1923	402	284
D. & H. 400	do	Sept. 27, 1923	San Francisco, Calif.	do	Oct. 12, 1923	234	6,722
D. & H. 500	Lyon Mountain, N. Y.	Nov. 6, 1923	New York, N. Y.	do	Nov. 8, 1923	407	443
D. & H. 400	Albany, N. Y.	Nov. 28, 1923	Lyon Mountain and New York, N. Y.	do	Dec. 5, 1923	407	200
Do	do	Dec. 23, 1923	New York, N. Y.	do	Dec. 28, 1923	201	284
Do	Lyon Mountain, N. Y.	Jan. 1, 1924	do	do	Jan. 3, 1924	47	284
D. & H. 500	do	Jan. 26, 1924	do	do	Jan. 29, 1924	407	300
Do	Albany, N. Y.	Feb. 14, 1924	do	Troy, N. Y.	Feb. 14, 1924	396	858
D. & H. 400	do	Mar. 19, 1924	Lyon Mountain and New York, N. Y.	Albany, N. Y.	Mar. 26, 1924	402	574
Do	do	Apr. 10, 1924	Chicago, Ill., Lyon Mountain, and New York, N. Y.	do	Apr. 30, 1924	402	3,150
Do	do	May 7, 1924	New Orleans, La.	do	May 30, 1924		6,539
Do	do	May 30, 1924	Lyon Mountain, N. Y., and Toledo, Ohio	do	June 11, 1924	402	1,409
Do	do	June 18, 1924	New York, N. Y.	do	June 20, 1924	416	573
Do	do	June 30, 1924	Lyon Mountain and New York, N. Y.	do	July 3, 1924	413	284
Do	do	July 14, 1924	do[2]	do	July 31, 1924	1,500	3,268
D. & H. 199	do	July 15, 1924	Louisville, Ky.	do	July 22, 1924	296	1,192
D. & H. 400	do	Aug. 23, 1924	Lyon Mountain and New York, N. Y.	do	Aug. 26, 1924	402	148
Do	do	Aug. 28, 1924	North Bay, Ontario	do	Sept. 4, 1924	545	718
Do	do	Sept. 8, 1924	Lyon Mountain, New York, and Plattsburg, N. Y.	do	Sept. 15, 1924	1,211	870
Do	do	Sept. 25, 1924	New York, N. Y.	do	Oct. 8, 1924	402	432
Do	do	Oct. 11, 1924	Lyon Mountain and New York, N. Y.	do	Oct. 29, 1924	944	3,658
Do	do	Oct. 30, 9124	New York and Lyon Mountain, N. Y.	do	Nov. 15, 1924	402	299

Wabash report:							
Wab. 400	New York, N. Y.	Nov. 15, 1924	Albany and Lyon Mountain, N. Y.	New York, N. Y.	Nov. 17, 1924		692
Do	do	Nov. 21, 1924	Albany, N. Y.	do	Nov. 24, 1924		692
Do	do	Nov. 26, 1924	do	do	Dec. 1, 1924		692
Do	do	Dec. 5, 1924	do	do	Dec. 7, 1924		771
Do	do	Dec. 12, 1924	do	do	Dec. 16, 1924		771
Do	do	Dec. 31, 1924	do	do	Jan. 6, 1925		692
Do	do	Jan. 23, 1925	do	do	Jan. 27, 1925		692
Do	do	Feb. 6, 1925	do	do	Feb. 10, 1925		692
Do	do	Feb. 11, 1925	San Francisco, Calif.	do	Mar. 10, 1925	664	9,333
Do	do	Mar. 13, 1925	Albany and Lyon Mountain, N. Y.	do	Mar. 17, 1925		771
Do	do	Mar. 20, 1925	do	do	Mar. 24, 1925		771
Do	do	Mar. 27, 1925	do	do	Mar. 30, 1925		692
Do	do	Apr. 15, 1925	Washington, D. C.	do	Apr. 15, 1925		480
Do	do	Apr. 16, 1925	Albany and Lyon Mountain, N. Y.	do	Apr. 21, 1925		692
Do	do	Apr. 21, 1925	do	do	Apr. 27, 1925		692
Do	do	Apr. 30, 1925	do	do	May 6, 1925		692
D. & H. report:							
D. & H. 500	Albany, N. Y.	May 14, 1925	Lyon Mountain, N. Y.	do	May 19, 1925	402	430
Wabash report:							
Wab. 400	New York, N. Y.	May 29, 1925	Albany and Lyon Mountain, N. Y.	do	June 2, 1925		692
Do	do	June 4, 1925	Washington, D. C.	do	June 5, 1925		480
Do	do	June 5, 1925	Albany and Lyon Mountain, N. Y.	do	June 9, 1925		692
Do	do	June 11, 1925	do	do	June 16, 1925		692
Do	do	June 18, 1925	do	do	June 23, 1925		692
Do	do	June 24, 1925	do	do	June 29, 1925		692
Do	do	July 1, 1925	do	do	July 6, 1925		692
Do	do	July 24, 1925	Albany and Plattsburg, N. Y.	do	July 28, 1925		674
Do	do	July 29, 1925	Albany and Lyon Mountain, N. Y.	do	Aug. 1, 1925		692
Do	do	Aug. 6, 1925	do	do	Aug. 11, 1925		692
Do	do	Aug. 12, 1925	do	do	Aug. 13, 1925		692
Do	do	Sept. 2, 1925	do	do	Sept. 8, 1925		692
Do	do	Sept. 10, 1925	San Francisco, Calif.	do	Oct. 5, 1925		7,193
D. & H. report:							
D. & H. 500	Albany, N. Y.	Sept. 17, 1925	New York and Lyon Mountain, N. Y.	Washington, D. C., and Albany, N. Y.	Sept. 27, 1925	800	1,319
Wabash report:							
Wab. 400	New York, N. Y.	Oct. 8, 1925	Albany and Lyon Mountain, N. Y.	New York, N. Y.	Oct. 13, 1925		692
Do	do	Oct. 13, 1925	Pittsburgh, Pa.	do	Oct. 16, 1925		1,447
Do	do	Nov. 5, 1925	Albany and Lyon Mountain, N. Y.	do	Nov. 8, 1925		692
Do	do	Nov. 13, 1925	do	do	Nov. 15, 1925		771
Do	do	Nov. 20, 1925	Boston, Mass.	do	Nov. 23, 1925		476
D. & H. report:							
D. & H. 500	Albany, N. Y.	Nov. 24, 1925	New York and Lyon Mountain, N. Y.	Albany, N. Y.	Dec. 2, 1925	266	415
Wabash report:							
Wab. 400	New York, N. Y.	Dec. 11, 1925	Albany and Lyon Mountain, N. Y.	New York, N. Y.	Dec. 15, 1925		771

[1] Lyon Mountain is a resort in the Adirondacks.

[2] This movement also included other destinations.

APPENDIX E

Statement covering private cars of the Nickel Plate

Number of car	Old number or date car was built for Nickel Plate	To whom assigned and periods of assignment	Periods cars on lines (months)	Trips exclusively on home line		Home-line portion of trips on home and foreign lines (miles)	Total mileage of home cars on home lines		Foreign line portion of trips on home and foreign lines		Total mileage of home cars on home and foreign lines	
				Miles	Miles per car-month		Miles	Miles per car-month	Miles [1]	Miles per car-month	Miles	Miles per car-month
21	T. S. L. & W. 60	General superintendent, Frankfort, Ind., Jan. 1, 1923, to Dec. 31, 1925.	36	61,672	1,713	414	62,086	1,725	426	12	62,512	1,736
22	T. S. L. & W. 400	Senior vice president, Toledo, Ohio, Jan. 1, 1923, to Dec. 31, 1925.	36	13,942	387	7,837	21,779	605	*31,586*	877	53,365	1,482
23	L. E. W. 69	General superintendent, Jan. 1, 1923, to Dec. 31, 1925; chief engineer, Jan. 1, 1923, to Sept. 16, 1924; district engineer, Sept. 16, 1924, to June 1, 1925; district engineer, June 1, 1925, to Dec. 31, 1923, Indianapolis, Ind.	36	57,898	1,608	2,816	60,714	1,687	2,717	75	63,431	1,762
24	L. E. W. 100	General manager, Jan. 1, 1923, to Feb. 14, 1923; no assignment, Feb. 14, 1923, to Dec. 31, 1924; vice president and general manager, Dec. 31, 1924, to Feb. 5, 1925; assistant general manager, Feb. 5, 1925, to Dec. 31, 1925, Indianapolis, to Feb. 14, 1923, Cleveland, subsequently.	36	42,427	1,179	8,104	50,531	1,404	43,891	1,219	94,422	2,623
25		President, Jan. 1, 1923, to Feb. 5, 1925; vice president and general manager, Feb. 5, 1925, to Dec. 31, 1925, Cleveland, Ohio.	36	45,312	1,259	10,218	55,530	1,543	*59,597*	1,655	115,127	3,198
26		Vice president and general manager Jan. 1, 1923, to Dec. 31, 1924; superintendent motive power, Jan. 1, 1925, to Dec. 31, 1925; general superintendent, Jan. 1, 1925, to Apr. 3, 1925; general superintendent, Apr. 11, 1925, to Dec. 31, 1925; chief engineer, Jan. 1, 1925, to May 18, 1925; chief engineer, June 1, 1925, to Dec. 31, 1925, Cleveland, Ohio.	36	89,267	2,480	6,525	95,792	2,661	11,363	317	107,155	2,977
27	Built Feb., 1925	Chairman, Feb. 5, 1925, to Dec. 31, 1925, Cleveland, Ohio	11	3,301	300	96	3,397	309	*30,732*	*2,794*	34,129	3,082
28	Built as No. 27, May, 1923, restenciled No. 28, Jan. 13, 1925.	Chairman, May 16, 1923, to Feb. 5, 1925; president, Feb. 5, 1925, to Dec. 31, 1925, Cleveland, Ohio.	32	23,757	742	4,612	28,369	887	*74,692*	*2,331*	102,971	3,218

[1] Note the heavy foreign-line mileage of cars 22, 25, 27, and 28 (italic) and the comparatively heavy average miles per car-month of the two latter cars on foreign lines.

APPENDIX F

Statement showing movement of the Louisiana & Pacific (Long-Bell Lumber Corporation) private cars over the Union Pacific Railroad

Car initial and number	Date	From—	To—	Occupants of car (exclusive of car crew)	Transportation	Total mileage on U. P. R. R.
L. & P. Kymokan 100	Apr. 21, 1923	Kelso, Wash	Portland, Oreg	Vice president, S. A. & S. W Secretary to vice president Assistant to vice president	Pass Ticket do	48
Do	May 23, 1923	Portland, Oreg	Kelso, Wash	Vice president, S. A. & S. W Secretary to vice president Assistant to vice president Superintendent, Long Bell Lbr. Mills	Pass Ticket do do	48
Do	June 19, 1923	Omaha, Nebr	Portland, Oreg., and Kansas City, Mo.	Vice president, S. A. & S. W Two children of vice president Four relatives of vice president Secretary to vice president	Passes do Tickets Ticket	3,790
Do	July 11, 1923	Portland, Oreg	Kansas City, Mo	Vice president, S. A. & S. W Manager of Longview Farm and wife Grandson of president Two maids Assistant to vice president and wife	Pass Tickets Ticket Tickets do	2,110
L. & P. 101	Sept. 11, 1924	Longview Junction, Wash	Portland, Oreg	Vice president, S. A. & S. W Employee	Pass do	45
Do	Nov. 15, 1924	Denver, Colo	Ogden, Utah	Vice president, S. A. & S. W Two employees	Pass Passes	589
L. P. & N. 101	Feb. 1, 1924	Omaha, Nebr	Portland, Oreg	Vice president, S. A. & S. W Chairman, S. A. & S. W., and wife Valet to chairman Assistant to vice president Chief clerk, Long Bell Lbr. Co	Pass Passes Pass Ticket do	1,775
Do	May 7, 1924	Longview Junction, Wash	Portland, Oreg	Vice president, S. A. & S. W General manager, Long Bell Lbr. Co Superintendent, Long Bell Lbr. Co Manager of stores, Long Bell Lbr. Co	Pass Ticket do do	45
Do	May 19, 1924	Ogden, Utah	Omaha, Nebr	Vice president, S. A. & S. W Four employees	Pass Passes	990
Do	June 7, 1924	Omaha, Nebr	Portland, Oreg	Vice president, S. A. & S. W Two children of vice president Friend of vice president's son Father of vice president Secretary to vice president Assistant to vice president Family of cook on car	do do Ticket do do do Passes	1,773

Statement showing movement of the Louisiana & Pacific (Long-Bell Lumber Corporation) private cars over the Union Pacific Railroad—Contd.

Car initial and number	Date	From—	To—	Occupants of car (exclusive of car crew)	Transportation	Total mileage on U. P. R. R.
L. P. & N. 101	Jan. 1, 1925	Portland, Oreg.	Omaha, Nebr.	Vice president, S. A. & S. W. Wife and two children of vice president	Pass Passes	1,782
Do.	Jan. 18, 1925	Kansas City, Mo.	Portland, Oreg.	Vice president and general manager, S. A. & S. W. Wife of chairman, S. A. & S. W. Daughter of chairman Maid of chairman's wife	Pass do Ticket Pass	2,013
Do.	Feb. 2, 1925	Longview Junction, Wash.	Portland, Oreg.			45
Do.	Apr. 9, 1925	Portland, Oreg.	Omaha, Nebr.	Chairman, S. A. & S. W. President, S. A. & S. W., and wife Treasurer, Long Bell Lbr. Co. Sister of president's wife Valet to chairman Vice president and general manager	Pass Passes Ticket do Pass do	1,732
Do.	June 11, 1925	Omaha, Nebr.	Portland, Oreg.	Vice president, S. A. & S. W. Wife and two children of vice president Assistant to vice president Grandmother of vice president Secretary to vice president Friend of son of vice president Father of vice president	do Passes Pass Ticket do do do	1,772
Do.	June 14, 1925	Portland, Oreg.	Omaha, Nebr.	Deadhead		1,782
Do.	July 17, 1925	Omaha, Nebr.	Ogden, Utah	Vice president and general manager, S. A. & S. W. and wife. Valet to vice president Maid to vice president's wife	Passes Pass do	990
Do.	Aug. 28, 1925	Portland, Oreg.	Omaha, Nebr.	Vice president and general manager, S. A. & S. W. Valet to vice president Maid to vice president's wife Two passengers	Passes Pass do Tickets	1,782
Do.	Sept. 12, 1925	Kansas City, Mo.	Portland, Oreg., and Omaha, Nebr.	Vice president, S. A. & S. W. Assistant to vice president and wife Treasurer, Long Bell Lbr. Co., and wife Maid	Pass Passes Tickets Ticket	3,795

APPENDIX G

Statement showing movement of Nevada Northern private cars on Western Pacific, Southern Pacific, and Union Pacific

Car [1]	Date	From—	To—	Occupants	Mileage
On Western Pacific: [2]					
No. 101	Jan. 1, 1923	Salt Lake, Utah	Shafter, Nev	General manager, N. N.	162
Do	Feb. 1, 1923	Shafter, Nev	Salt Lake, Utah	Deadhead	162
Do	Feb. 7, 1923	Salt Lake, Utah	Shafter, Nev	General manager, N. N.	162
Do	June 6, 1923	Shafter, Nev	Salt Lake, Utah	do	162
Do	Sept. 26, 1923	do	Oakland, Calif	General manager, N. N., and wife.	762
Do	July 11, 1923	do	Salt Lake, Utah	General manager, N. N.	324
Do	June 14, 1923	do	do	General manager, N. N., and wife; wife of M. M. S. P.; wife of chief surgeon, N. N.	762
Do	Oct. 18, 1923	do	do	General manager, N. N.	162
Do	Nov. 6, 1923	Salt Lake, Utah	Shafter, Nev	do	162
Do	Mar. 17, 1924	Shafter, Nev	Salt Lake, Utah	General manager, N. N., and wife; traffic manager, N. N., and wife.	324
Cyprus	Mar. 27, 1924	Oakland, Calif	Shafter, Nev	Vice president, N. N., and wife.	762
Do	Mar. 21, 1924	Shafter, Nev	Salt Lake, Utah	do	162
Do	Aug. 5, 1924	do	do	do	162
Do	Aug. 16, 1924	Alazon, Nev	Oakland, Calif	do	713
No. 101	Feb. 14, 1925	Shafter, Nev	Salt Lake, Utah	General manager, N. N.	162
Do	Mar. 6, 1925	Salt Lake, Utah	Shafter, Nev	Vice president, N. N.	162
Do	May 19, 1925	Shafter, Nev	Oakland, Calif	General manager, N. N., and wife.	762
Do	June 28, 1925	do	Salt Lake, Utah	do	162
Do	July 2, 1925	Salt Lake, Utah	Shafter, Nev	General manager, N. N.	162
Do	Aug. 11, 1925	Alazon, Nev	Oakland, Calif	do	713
Do	Nov. 22, 1925	Shafter, Nev	Salt Lake, Utah	do	162
Total miles					7,228
On Southern Pacific: [3]					
No. 101	Jan. 2, 1923	Cobre, Nev	Ogden, Utah	General manager, N. N.	137
Do	Feb. 20, 1923	do	San Francisco, Calif.; Maricopa, Ariz.	Vice president, C. R. & N. W.	1,619
Cyprus	(?)	Oakland Pier, Calif.	Cobre, Nev	Vice president, N. N.	641
No. 101	Mar. 6, 1923	Maricopa, Ariz	San Francisco, Calif.; Cobre, Nev.	Vice president, C. R. & N. W.	1,620
Cyprus	May 10, 1923	Deming, N. Mex.	Maricopa, Ariz	Vice president, N. N.	310
Do	May 13, 1923	Maricopa, Ariz	Oakland Pier, Calif	do	897
No. 100	May 25, 1923	Ogden, Utah	Cobre, Nev	President, C. R. & N. W.	138
Do	May 27, 1923	Cobre, Nev	Ogden, Utah	do	137
No. 101	June 15, 1923	Oakland, Calif	Cobre, Nev	General manager, N. N.	641
Cyprus	Aug. 15, 1923	Ogden, Utah	Oakland Pier, Calif.; Sacramento, Calif.; Oakland Pier, Calif.	Vice president, N. N.	1,727
No. 100	Aug. 4, 1923	Portland, Oreg	Merced, Calif	President, N. N.	914
Do	Aug. 9, 1923	Merced, Calif	Ogden, Utah	do	808
Cyprus	do	Oakland, Calif	do	Vice president, N. N.	778
No. 100	Oct. 18, 1923	Ogden, Utah	Cobre, Nev	President, C. R. & N. W.	138
Do	Oct. 20, 1923	Cobre, Nev	Ogden, Utah	do	137
Cyprus	Nov. 19, 1923	Deming, N. Mex	Los Angeles, Calif.	Vice president, N. N. (for repairs).	1,440
Do	Dec. 2, 1923	do	Maricopa, Ariz	Vice president, N. N.	310

[1] Car Cyprus is privately owned by a vice president of the Nevada Northern.
[2] Trips made on Western Pacific by Nevada Northern cars 100, 101, and Cyprus during 1923, 1924, and 1925.
[3] Trips made on Southern Pacific by Nevada Northern cars 100, 101, and Cyprus.

Statement showing movement of Nevada Northern private cars on Western Pacific, Southern Pacific, and Union Pacific—Continued

Car	Date	From—	To—	Occupants	Mileage
On Southern Pacific—Con.					
Cyprus	Dec. 5, 1923	Maricopa, Ariz.	San Francisco, Calif.; Oakland, Calif.	Vice president, N. N.	979
No. 101	Jan. 21, 1924	Cobre, Nev.	Oakland Pier, Calif.	General manager, N. N.	1,282
Cyprus	do	Oakland Pier, Calif.	Ogden, Utah	Vice president, N. N.	778
Do	Mar. 15, 1924	Ogden, Utah	Oakland Pier, Calif.	do	779
Do	May 7, 1924	Deming, N. Mex.	Maricopa, Ariz.	do	310
Do	May 10, 1924	Maricopa, Ariz.	Oakland Pier, Calif.; Sacramento, Calif.	do	995
Do	do	Sacramento, Calif.	Oakland Pier, Calif.	Unoccupied	85
No. 101	June 6, 1924	Cobre, Nev.	do	General manager, N. N.	1,282
Do	July 6, 1924	do	Reno, Nev.	do	401
Cyprus	June 4, 1924	Oakland Pier, Calif.	Cobre, Nev.	Vice president, N. N.	636
Do	Aug. 15, 1924	Ogden, Utah	Alazon, Nev.	do	180
Cyprus	Aug. 22, 1924	Oakland, Calif.	Ogden, Utah	Vice president, N. N.	773
No. 101	Sept. 27, 1924	Cobre, Nev.	Oakland Pier, Calif.	General manager, N. N.	1,277
No. 100 C. R. & N. W.	Nov. 22, 1924	Los Angeles, Calif.	El Paso, Tex.	Treasurer, C. R. & N. W.	853
Do	Dec. 11, 1924	Ogden, Utah	Cobre, Nev.	President, C. R. & N. W.	139
Do	Dec. 12, 1924	Cobre, Nev.	Ogden, Utah	do	138
Do	Dec. 24, 1924	Ogden, Utah	Oakland Pier, Calif.	do	1,521
Cyprus	Dec. 3, 1924	El Paso, Tex.	Ray Junction, Ariz.; Oakland Pier, Calif.	Vice president, N. N.	1,528
No. 100 C. R. & N. W.	Feb. 11, 1925	Tucumcari, N. Mex.	El Centro, Calif.	President, C. R. & N. W.	965
No. 101	Feb. 17, 1925	Los Angeles, Calif.	Nogales, Ariz.	General manager, N. N.	369
Do	Feb. 28, 1925	Nogales, Ariz.	Los Angeles, Calif.	do	369
Cyprus	(?)	Oakland Pier, Calif.	Ogden, Utah	Vice president, N. N.	773
Do	Mar. 23, 1925	do	do	do	773
Do	May 4, 1925	Deming, N. Mex.	Ray Junction, Ariz.	do	491
Do	May 10, 1925	Los Angeles, Calif.	Oakland Pier, Calif.	do	497
No. 101	May 20, 1925	Oakland, Calif.	Cobre, Nev.	General manager, N. N.	638
Cyprus	July 10, 1925	Oakland Pier, Calif.	Deming, N. Mex.; Winkleman, Ariz.; Phoenix, Ariz.; Ray Junction, Ariz; San Francisco, Calif.; Portland, Oreg.	Vice president, N. N.	3,656
Do	Aug. 22, 1925	Ogden, Utah	Oakland Pier, Calif.	do	779
No. 101	Aug. 19, 1925	Oakland, Calif.	Cobre, Nev.	General manager, N. N.	636
Cyprus	Aug. 15, 1925	Cobre, Nev.	Wells, Nev.	Vice president, N. N.	47
Do	(?)	Oakland Pier, Calif.	Ogden, Utah	do	773
Do	Nov. 5, 1925	Phoenix, Ariz.	Ray Junction, Ariz.	do	499
Do	Nov. 8, 1925	Deming, N. Mex.	Tucumcari, N. Mex.	do	420
Do	Dec. 1, 1925	Ogden, Utah	Oakland Pier, Calif.; San Jose, Calif.; Oakland Pier, Calif.	do	965
					[4] 35,760

[4] Total mileage, not including 3,616 miles by C. R. & N. W. car No. 101.

Trips made on Union Pacific by Nevada Northern private cars

Car	Movement	Occupants
N. N. 100	Ogden, Utah, to Los Angeles, Calif., Aug. 13, 1923, mileage 1,708.	President, N. N., and wife, passes; president's daughter, pass; secretary to president, pass; two guests, tickets; two maids, tickets; valet, ticket.
Do	Council Bluffs, Iowa, to Salt Lake City, Utah, May 21, 1923, mileage 1,065.	President, C. R. & N. W., pass; vice president and general manager, C. R. & N. W., pass; another vice president, C. R. & N. W. pass; secretary to president, pass.
Do	Ogden, Utah, to Council Bluffs, Iowa, May 28, 1923, 993 miles.	President, C. R. & N. W., pass; vice president, C. R. & N. W., pass; secretary to president, pass.
Do	Butte, Mont., to Salt Lake City, Utah, Oct. 16, 1923, mileage 469.	President, C. R. & N. W., pass; two employees of N. N., passes.
Do	Ogden, Utah, to Omaha, Nebr., Oct. 21, 1923, mileage 990.	President, C. R. & N. W., pass; vice president and general manager, C. R. & N. W., pass; secretary to president, pass.
N. N. Ely 101	Ogden, Utah, to Omaha, Nebr., Jan. 3, 1923, mileage 990.	General manager, N. N., and wife, passes; daughter of general manager, pass; nurse, pass.
Do	Omaha, Nebr., to Salt Lake City, Utah, Jan. 9, 1923, mileage 1,026.	General manager, N. N., and crew (cook and porter), passes.
Do	Salt Lake City, Utah, to Council Bluffs, Iowa, Feb. 2, 1923, mileage 2,058.	General manager, N. N., and wife, daughter, and crew, passes.
Do	Salt Lake City, Utah, to Los Angeles, Calif., Oct. 19, 1923, mileage 784.	General manager, N. N., and wife, passes; chief surgeon, N. N., and wife, passes; storekeeper, pass.
Do	Los Angeles, Calif., to Salt Lake City, Utah, Nov. 4, 1923, mileage 784.	
N. N. Cyprus	Salt Lake City, Utah, to Ogden, Nev., Mar. 24, 1923, mileage 433.	Vice president, N. N., and wife, passes; maid, pass; secretary to vice president, pass.
Do	Salt Lake City to Ogden, Utah, Aug. 13, 1923, mileage 36.	Vice president, N. N., pass; secretary to vice president, pass.
Do	Ogden, Utah, to Butte, Mont., via Salt Lake City, Utah, Oct. 2, 1923, mileage 469.	Vice president, N. N., and wife, passes; maid, pass; secretary, pass; vice president and general manager, B. & G., pass; assistant general manager, Utah Copper Co., ticket.
Do	Salt Lake City to Ogden, Utah, Aug. 6, 1924, mileage 1,044.	President, B. & G., pass; secretary, pass; vice president, B. & G., pass; doctor, ticket; passenger, ticket.
Do	Ogden, Utah, to Omaha, Nebr., Oct. 9, 1924, mileage 1,062.	President, B. & G., and wife, passes; secretary and maid, passes.
Do	Omaha, Nebr., to Ogden, Utah, Mar. 14, 1924, mileage 990.	President, B. & G., and secretary, passes.
Do	Ogden, Utah, to Omaha, Nebr., Mar. 2, 1925, mileage 990.	President, B. & G., and secretary, passes.
Do	Butte, Mont., to Salt Lake City, Utah, Mar. 17, 1925, mileage 433.	Do.
Do	Ogden, Utah, to Omaha, Nebr., Apr. 2, 1925, mileage 990.	President, B. & G., wife, maid, and secretary, passes.
Do	Butte, Mont., to Salt Lake City, Utah, Aug. 11, 1925, mileage 433.	President, B. & G., and secretary, passes.
Do	Salt Lake City to Ogden, Utah, Aug. 18, 1925, mileage 578.	President, B. & G., and secretary, passes.
Do	Ogden, Utah, to Omaha, Nebr., Sept. 30, 1925, mileage 1,062.	President, B. & G., wife, secretary, and maid, passes; guest, ticket.
Do	Omaha, Nebr., to Ogden, Utah, Nov. 30, 1925, mileage 990.	President, B. & G., and secretary, passes.
N. N. 100	Council Bluffs, Iowa, to Salt Lake City, Utah, Aug. 7, 1925, mileage 2,946. Trude, Idaho; Pocatello, Idaho.	President, N. N., pass; five passengers, tickets; valet, ticket; secretary, ticket.
N. N. 101	Salt Lake City, Utah, to Los Angeles, Calif., Feb. 14, 1925, mileage 784.	General manager, N. N., and wife, passes; secretary, pass; chief surgeon, N. N., and wife, passes.
Do	Los Angeles, Calif., to Salt Lake City, Utah, Mar. 4, 1925, mileage 784.	Do.
Do	Salt Lake City, Utah, to Payette, Idaho, and return, June 29, 1925, mileage 940.	General manager, N. N., and wife, passes.

APPENDIX H

Statement showing movement of Pullman cars occupied by railway officials and others and transported free or at less than published tariff rates

ON UNION PACIFIC RAILROAD

Name of car	Movement	Occupants
National	Omaha, Nebr., to Ogden, Utah, Mar. 10, 1923, mileage 990.	Cook and porter.
Do	Ogden, Utah, to Omaha, Nebr., Mar. 13, 1923, mileage 990.	Director of M. P. R. R., pass; two nurses, passes; four passengers, tickets.
Do	Omaha, Nebr., to Ogden, Utah, Aug. 31, 1923, mileage 990.	Waiter, cook, and porter.
Do	Ogden, Utah, to Omaha, Nebr., Sept. 5, 1923, mileage 990.	Director of M. P. R. R., and wife, passes; three passengers, tickets.
Pioneer	Omaha, Nebr., to Ogden, Utah, Jan. 20, 1923, mileage 990.	Director of S. P. Co., pass; valet to director, pass; relative of director, her secretary, maid, and man servant, tickets.
Do	Ogden, Utah, to Omaha, Nebr., Jan. 23, 1923, mileage 990.	Director of S. P. Co., pass; valet, pass; relative of director, her secretary, maid, man servant, and laundress, tickets.
Do	Ogden, Utah, to Omaha, Nebr., Mar. 10, 1923, mileage 990.	Director of S. P. Co., pass; director's valet, pass; director's relative, her secretary and servants, tickets.
Boston	Omaha, Nebr., to Ogden, Utah, Mar. 2, 1924, mileage 990.	Director of S. P. Co., pass; director's valet, pass; director's relative, her secretary, and three maids, tickets.
Do	Ogden, Utah, to Omaha, Nebr., Mar. 8, 1924, mileage 990.	Do.
Do	Omaha, Nebr., to Los Angeles, Calif., July 29, 1924, mileage 1,810.	Car crew.
Do	Butte, Mont., to Omaha, Nebr., Aug. 27, 1924, mileage 1,681.	President of T. & W. Ry., wife and daughter, passes; two passengers, tickets.
Chicago	Omaha to Portland, Oreg., Mar. 17, 1924, via Denver, mileage 2,229.	President of T. & W. Ry., and wife, passes; secretary to president, ticket; two passengers, tickets; maid and valet, passes.
Advance	Portland, Oreg., to Omaha, Nebr., July 8, 1925, mileage 1,994.	Assistant to president of N. P., pass; personal physician of assistant to president, and wife, tickets; four Government officials, tickets.
Philadelphia	Omaha, Nebr., to Ogden, Utah, July 17, 1925, mileage 990.	Director of S. P., pass; valet, pass; relative of director, her secretary, and three servants, tickets.
Do	Ogden, Utah, to Omaha, Nebr., Jan. 21, 1925, mileage 990.	Do.
Washington	Omaha, Nebr., to Seattle, Wash., Apr. 7, 1925, mileage 1,970.	Director U. P. R. R., pass; three passengers, tickets.

ON NEW YORK CENTRAL RAILROAD

Pullman car	Date	Occupants
Pioneer	Jan. 17, 1923	Director, N. Y. C., and party.
Do	Mar. 12, 1923	Do.
Boston	Apr. 30, 1923	Wife of president, N. Y. C.
Chicago	June 11, 1923	President, R. L. Trans. Co.
Republic	Aug. 26, 1923	Do.
National	Sept. 7, 1923	Director.
Boston	Oct. 15, 1923	President, Magma Arizona R. R.
Chicago	Oct. 15, 1923	President, R. L. Trans. Co.
Do	Oct. 17, 1923	Do.
Adventurer	Nov. 1, 1923	Director, Mo. Pac.
Do	Nov. 5, 1923	Do.
Newport	Nov. 1, 1923	Director, A., T. & S. F.
Do	Nov. 5, 1923	Do.
Washington	Jan. 15, 1924	Director, N. Y. C., and party.
Boston	Mar. 10, 1924	Do.
Colonial	Apr. 17, 1924	Vice president and treasurer, C. R. & N. W., and party.
Newport	Apr. 22, 1924	President, Magma Arizona R. R.
Constitution	Apr. 27, 1924	Director, L. A. & S. L.
Do	Apr. 30, 1924	Do.
Superb	June 14, 1924	Director, Vgn. Ry., and party.
Pioneer	July 2, 1924	Chairman, Union Stock & Transit Co., and party.
Do	Aug. 28, 1924	Do.
Adventurer	Oct. 13, 1924	President, R. L. Trans. Co., and party.
Do	Oct. 17, 1924	Do.

Statement showing movement of Pullman cars occupied by railway officials and others and transported free or at less than published tariff rates—Continued

ON NEW YORK CENTRAL RAILROAD—continued

Pullman car	Date	Occupants
Superb	Oct. 23, 1924	Director, Mo. Pac.
Do	Oct. 26, 1924	Do.
Colonial	Oct. 7, 1924	Director, Virginian.
Do	Oct. 8, 1924	Do.
Philadelphia	Jan. 15, 1925	Director, N. Y. C., and party.
Ideal	Jan. 9, 1925	Vice President, Mo. Pac., and wife.
Do	Jan. 10, 1925	Do.
Chicago	June 12, 1925	Director, L. A. & S. L., and party.
Patriot	Oct. 22, 1925	Director, Mo. Pac., and party.
Clysma	Oct. 26, 1925	Do.
National	Oct. 19, 1925	President, R. L. Trans. Co., and party.
Do	Oct. 21, 1925	Do.
New York	Nov. 20, 1925	President, Toledo & Western, and party.
Do	Nov. 22, 1925	Do.
Ideal	Nov. 30, 1925	President, R. L. Trans. Co.
Other than those listed were:		
Boston		Director, N. P. and president, W. F. Exp.
Philadelphia		President, Chicago, North Shore & Milwaukee.
Pioneer		Director, Virginian.
Palm Beach		Do.
Colonial		Passenger traffic manager, Nor. Pac.
Commonwealth		Chairman of board, Reading.
Washington		President, Tremont & Gulf.
Do		Director, U. P. R. R.
Chicago		Vice president, N. O. G. N.
Patriot		General counsel, W. Va. No.
Columbia		President, Waycross & Georgia.
Mayflower		Director, Wabash Ry.
Constitution		President, Virginian.
New York		Treasurer, Durham & Southern.

By the commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

[fol. 171] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—July 12, 1930

The petitioners in the above entitled suit, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in the above entitled suit by the District Court of the United States for the Western District of Kentucky on the 13th day of June, 1930, and from each and every part thereof, and having presented their petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Western District of Kentucky in this cause as provided by law, and it is further ordered that the Clerk of the Court appealed from shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said court within 30 days from this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $500.00.

Chas. I. Dawson, Judge of the District Court for the Western District of Kentucky; Chas. H. Moorman, Judge of the United States Court of Appeals for the Sixth Circuit; Smith Hickenlooper, Judge of the United States Court of Appeals for the Sixth Circuit.

[fol. 172] IN UNITED STATES DISTRICT COURT

ORDER FILING APPEAL PAPERS—July 12, 1930

Came the Louisville & Nashville Railroad Company, Illinois Central Railroad Company, The Baltimore & Ohio Railroad Company, The Chesapeake & Ohio Railway Com-

pany, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company, by counsel, and tendered their notice of appeal, petition for appeal therein, assignment of errors and statement of the evidence condensed as required by Equity Rule 75, all of which are ordered to be filed.

Chas. H. Moorman, Circuit Judge; Smith Hickenlooper, Circuit Judge; Chas. I. Dawson, District Judge.

[fol. 173] Citation in usual form showing service on Elmer B. Collins and J. Stanley Payne, omitted in printing.
[fol. 174] Bond on appeal for $500.00 approved and filed July 24, 1930, omitted in printing.

[fol. 175] In United States District Court

Præcipe for Record—Filed July 25, 1930

To the Clerk:

Please prepare a transcript of the record in the above case on appeal to the Supreme Court of the United States containing the following:

(1) Petition, including all exhibits thereto attached.
(2) Answer of the United States.
(3) Answer of the Commission, including exhibits thereto attached.
(4) Stipulation read into the record on the hearing of the case, December 20, 1929, by Mr. Knowlton, Counsel for the Commission, and agreed to by all the counsel in the case.
(5) Condensed statement of the evidence.
(6) All orders of the District Court in their appropriate order.
(7) Opinion of the Court.
(8) Final Decree.
(9) Notice of Appeal to the Attorney General of Kentucky and proof or acknowledgment of service.
(10) Petition for Appeal and Assignment of Errors.
(11) Acknowledgment of service thereof.
(12) Order allowing appeal.

[fol. 177]

Railroad	Year	Number of private cars	Home Cars on Home Railroad — Transportation: Trips	Occupants	Pass	Ticket	Home Cars on Home and Foreign Railroads — Transportation: Trips	Occupants	Pass	Ticket	Foreign Cars on Home Railroad — Transportation: Trips	Occupants	Pass	Ticket
Baltimore & Ohio RR Co.	1923	20	493	1378	1368	10	105	331	311	20	197	504	442	62
	1924	20	490	1380	1372	8	117	380	343	37	173	445	393	52
	1925	20	493	1362	1341	21	119	365	345	20	193	509	460	49
Chesapeake & Ohio Ry.	1923	8	224	455	453	2	46	135	135		97	169	159	10
	1924	9	251	549	547	2	79	214	214		90	145	128	17
	1925	9	243	607	597	10	105	198	195	3	114	227	185	42
Cleveland, Cincinnati, Chicago & St. Louis RR *	1923	6	399	751	749	2	46	92	90	2	237	345	345	
	1924	6	458	855	853	2	56	109	109		252	392	392	
	1925	6	538	1010	1009	1	86	153	152	1	313	421	421	
(Illinois Central R. R.	1923	19	403	1030	1012	18	92	242	227	15	179	262	255	7
(Yazoo & Miss. Valley Ry.	1924	19	371	969	957	12	96	241	226	15	182	252	245	7
	1925	19	346	905	895	10	145	344	331	13	212	295	263	32
Louisville & Nashville RR.	1923	13	299	352	351	1	45	86	86		139	145	142	3
	1924	13	288	409	409		70	169	169		166	309	300	9
	1925	13	332	510	509	1	55	136	135	1	177	367	336	31

*Includes: Cincinnati Northern RR; Evansville, Ind. & Terre Haute RR.; Peoria & Eastern Railway, subsidiaries of the C. C. C. & St. L.

(13) Citation of appeal, with acknowledgment of service thereon.

(14) This præcipe.

(15) Clerk's Certificate of Transcript of Record.

(Signed by Mr. Thom) Edward S. Jouett, R. V. Fletcher, John J. Cornwell, Robert B. Tunstall, H. N. Quigley, Alfred P. Thom, Jr., Alfred P. Thom, Solicitors for Petitioners & Appellants.

Service of the foregoing præcipe, and the receipt of a copy thereof, are hereby admitted and acknowledged this 22nd day of July, 1930.

Elmer B. Collins, Special Asst. to the Atty. Gen'l., Slocitor for United States; Daniel W. Knowlton, Slocitor for Interstate Commerce Commission.

[fol. 176] In United States District Court

Præcipe of United States of America and Interstate Commerce Commission, Defendants, for Additional Portions of Record to be Incorporated Into the Transcript of the Record for the United States Supreme Court—Filed July 25, 1930

To the Clerk of the United States District Court for the Western District of Kentucky:

Defendants hereby file this præcipe asking that additional portions of the record be incorporated into the transcript, namely:

The following recapitulations (from the returns of petitioners) showing separately for said petitioners the number of trips of their private passenger or office cars (transported free when occupied by passholders), number of occupants holding passes and number holding tickets, mileage covered on home and foreign lines and mileage of foreign cars (transorted free when occupied by passholders) on petitioners' lines. The evidence so shown in said recapitulations is to be included in the transcript as in addition to and supplemental to petitioners' "statement of the evidence, condensed as required by equity rule 75, presented to the District Court in this case" heretofore filed herein.

(Here follows table, side folio 177.)

[fol. 178]

MILEAGE

	Year	Home cars on home roads	Home cars on foreign roads: Own line	Home cars on foreign roads: Other lines	Foreign cars on home roads
Baltimore & Ohio Railroad Company	1923	287,099	88,329	47,632	90,059
	1924	260,901	83,212	48,576	68,500
	1925	288,631	98,935	64,777	89,266
Chesapeake & Ohio Ry.	1923	114,075	49,677	35,079	52,444
	1924	152,652	53,340	39,600	46,994
	1925	180,670	42,640	36,786	69,867
Cleveland, Cincinnati, Chicago & St. Louis R. R.*	1923	111,511	11,218	38,702	62,843
	1924	138,194	16,529	34,764	64,545
	1925	158,155	24,046	73,730	85,523
Illinois Central Railroad, Yazoo & Miss. Valley Ry.	1923	360,105	71,041	68,115	98,816
	1924	344,883	72,800	79,502	101,135
	1925	289,480	161,065	82,153	114,161
Louisville & Nashville R. R.	1923	116,304	24,452	31,011	43,849
	1924	111,862	40,307	41,176	50,814
	1925	147,847	28,604	35,253	53,167

*Includes: Cincinnati Northern R. R.: Evansville, Ind. & Terre Haute R. R.; Peoria & Eastern Railway, subsidiaries of the C. C. C. & St. L.

[fol. 179] Elmer B. Collins, Solicitor for United States; Daniel W. Knowlton, Solicitor for Interstate Commerce Commission.

Service of the foregoing præcipe asking that additional portions of the record be incorporated into the transcript, and the receipt of a copy thereof, are hereby admitted and acknowledged this 23d day of July, 1930.

Alfred P. Thom, Solicitor for Appellants.

[fol. 180] In United States District Court

Order Filing Stipulation of Record—July 31, 1930

Came the petitioners and defendants herein, by counsel, and tendered a stipulation in regard to the record herein, which stipulation is ordered to be filed.

[fol. 181] In United States District Court

Stipulation re Transcript of Record—Filed July 31, 1930

It is hereby stipulated that, instead of copying into the record for the appeal in this case the report of the Commission in the Tap Line case, 23 I. C. C. 277-298; in the Colorado Free Pass Investigation, 26 I. C. C. 491-494, and the report of the Commission in the Five Per Cent Case, 31 I. C. C. 351-410, which were introduced in evidence, the same may be availed of in the Supreme Court by referring to those reports as they appear in the official Interstate Commerce Commission Reports.

United States of America, by Elmer B. Collins, Special Assistant to the Attorney General; Interstate Commerce Commission, by J. Stanley Payne, Its Solicitor; Appellants, by Alfred P. Thom, Their Solicitor.

[fol. 182] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 183] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed Aug. 7, 1930

[fol. 184] To the Clerk of the Supreme Court:

Points to be Relied On

The appellants hereby adopt the several assignments of error, as contained in the record, as a statement of the points upon which they rely on this appeal.

Designation for Printing

The appellants request that all of the record be printed, except:

1. The report of the Commission in the Tap Line Case, 23 I. C. C. 277, 298. (R. 127.)
2. The report of the Commission in the Colorado Free Pass Investigation, 26 I. C. C. 491, 494. (R. 128.)
3. The report of the Commission in the Five Per Cent Case, 31 I. C. C. 351, 410. (R. 129.)

The parts here indicated as not to be printed are covered by a stipulation in the record between counsel representing the various parties that the several reports of the Commission mentioned herein may be referred to in the offi-
[fol. 185] cial reports of the Commission instead of having them printed in the record.

Edward S. Jouett, R. V. Fletcher, John J. Cornwell, Robert B. Tunstall, H. N. Quigley, Alfred P. Thom, Jr., Alfred P. Thom, Solicitors for Appellants.

August 7, 1930.

Service accepted this 7th day of August, 1930.

United States of America, by Elmer B. Collins, Special Assistant to the Attorney General; Interstate Commerce Commission, by Daniel W. Knowlton, Its Solicitor.

[fol. 186] [File endorsement omitted]

Endorsed on cover: File No. 35,255, W. Kentucky, D. C. U. S., Term No. 333. Louisville & Nashville Railroad Company, Illinois Central Railroad Company, The Baltimore & Ohio Railroad Company, et al., etc., Appellants, vs. United States of America, Interstate Commerce Commission and J. W. Cammack, Attorney General of the State of Kentucky. Filed August 5, 1930. File No. 35,255.